(25,430)

# SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, 1916.**

# No. 600.

F. A. DICKSON, PLAINTIFF IN ERROR,

*vs.*

LUCK LAND COMPANY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

INDEX.



JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOVEMBER 28, 1916.

1 STATE OF MINNESOTA,
*County of Becker:*

District Court, 7th Judicial District.

LUCK LAND COMPANY, a Corporation, Plaintiff,
vs.
C. J. MINOR, F. A. DICKSON, and R. L. SMITH; Also All Other Persons Unknown Claiming Any Right, Title, Estate, Interest or Lien in the Real Estate Described in the Complaint Herein, Defendants.

*Complaint.*

The plaintiff complains of the defendant and alleges:

1st. That the plaintiff is a corporation duly organized and existing under and by virtue of the laws of the State of Minnesota, with its principal place of business at Waubun, Mahnomen county, Minnesota.

2nd. That it is the owner in fee of the following described premises situate in the county of Becker and state of Minnesota, viz:
2 lot seven (7) of section two (2) and the northeast quarter of the northeast quarter of section twenty-five (25), all in township one hundred forty-two (142), north of range thirty-nine (39), west.

3rd. That the said premises are vacant and unoccupied.

4th. That the defendants claim an estate or interest in said premises or lien thereon adverse to plaintiff.

Wherefore, plaintiff demands judgment.

1st. That it is the owner in fee of said premises.

2nd. That the defendants have no estate or interest in said premises or lien thereon.

3rd. For the costs and disbursements of this action.

JOHNSTON & DENNIS,
*Plaintiff's Attorney, Detroit, Minnesota.*

(Duly verified.)

(Title of Cause.)

*Separate Answer of F. A. Dickson.*

The above named defendant Dickson for his answer to the complaint in the above entitled action, admits that the plaintiff is a corporation, that the land is vacant; denies that the plaintiff is the owner in fee of the premises described in the complaint and alleges that he is the owner in fee of said premises.

Wherefore, defendant demands judgment that he is the owner in

fee of said premises, that plaintiff has no estate or interest in
3 the same and for his costs and disbursements in this action.

CLYDE R. WHITE,
*Attorney for Defendant Dickson.*

314 Minn. L. & T. Bldg., Minneapolis, Minnesota.
(Duly verified.)

(Title of Cause.)

*Separate Answer of R. L. Smith.*

The defendant, R. L. Smith, for his personal answer to the complaint in the above entitled matter admits that the plaintiff is a corporation and that the land described in the complaint is vacant; denies that the plaintiff has any right, title or interest in or to such premises and alleges that he is the owner in fee simple of said premises; and demands judgment that he is the owner in fee of said premises, that plaintiff has no right, title or interest in or to the same, and for his costs and disbursements.

JAY W. CRANE,
*Attorney for Defendant Smith.*

900 Metropolitan Life Building, Minneapolis, Minnesota.

STATE OF MINNESOTA,
*County of Hennepin, ss:*

R. L. Smith, being duly sworn, says he has read the within answer and knows its contents; that it is true except as to statements made therein upon information and belief and as to such he believes it to be true; that he is one of the above named defendants.

4 R. L. SMITH.

Subscribed and sworn to before me this 4th day of Aug., 1914.
(Notarial Seal.) J. A. SEBESTA,
*Notary Public.*

Hennepin County, Minnesota.
My commission expires Feb. 27, 1921.

(Separate answer of C. J. Minor not printed.)

(Title of Cause.)

*Reply to Separate Answer of F. A. Dickson.*

Comes now the plaintiff and for its reply to the separate answer of the defendant F. A. Dickson denies each and every allegation of new matter in the said answer contained and the whole thereof.

Wherefor the plaintiff demands judgment as prayed for in its complaint herein.

August 21st, 1914.

C. M. JOHNSTON AND
FRED DENNIS,
*Attorneys for Plaintiff.*

Detroit, Minnesota.
(Duly verified.)

5 (Title of Cause.)

*Reply to Separate Answer of R. L. Smith.*

Comes now the plaintiff and for its reply to the separate answer of the defendant R. L. Smith denies each and every allegation of new matter in said answer contained and the whole thereof.

Wherefore the plaintiff demands judgment as prayed for in its complaint herein.

August 21, 1914.

C. M. JOHNSTON AND
FRED DENNIS,
*Attorneys for Plaintiff.*

Detroit, Minnesota.
(Duly verified.)
(Reply to separate answer of C. J. Miner not printed.)

(Title of Cause.)

*Supplemental answer of F. A. Dickson.*

The defendant F. A. Dickson, for his supplemental answer to the complaint herein, made and served under and pursuant to an order of this court made on the 17th day of October, 1914, to which reference is hereby made, alleges that on or about the 14th day of October, 1914, this defendant acquired all the right, title and interest of the defendant R. L. Smith in and to the land described in the complaint herein, which the said R. L. Smith possessed
6 or had at the commencement of this action, or claimed to possess and have at said date; that this defendant is the owner in fee of the said premises; that said land is vacant and unoccupied; that the plaintiff is not the owner in fee of said premises, and accordingly demands judgment that he is the owner in fee of said premises, that plaintiff has no estate or interest in the same, and for his costs and disbursements herein.

CLYDE R. WHITE,
*Attorney for Defendant Dickson,*

314 Minn. Loan & Trust Bldg., Minneapolis, Minnesota.

(Duly verified.)

(Title of Cause.)

*Findings of Fact and Conclusions of Law.*

This action was on the calendar of causes for the October, 1914, general term of the above named court, and was tried by the court, without a jury, on October 17th, 1914.

Messrs. Johnson & Dennis and Marshall A. Spooner appeared as attorneys for the plaintiff, and Messrs. C. C. Haupt and Clyde R. White appeared as attorneys for the defendant F. A. Dickson.

No appearance was made at the trial for any other defendant, although defendants C. J. Minor and R. L. Smith had appeared in said action and answered the plaintiff's complaint therein.

From the evidence, after submission of the case upon the
7 oral arguments and written briefs of the respective attorneys, the court finds as facts:

I.

That the plaintiff is a corporation, duly organized and existing under and by virtue of the laws of the state of Minnesota, with its principal place of business at Waubun, Mahnomen county, Minnesota.

II.

That Me-gis-way-waish-kung, who is otherwise known as George Wah-way-cumig, is a mixed blood Chippewa Indian of the White Earth Indian Reservation; that the lands described in the plaintiff's complaint herein, to-wit: lot seven (7) of section two (2) and the northeast quarter of the northeast quarter (NE¼ NE¼) of section twenty-five (25), in township one hundred forty-two (142) north, of range thirty-nine (39) west, are within the limits of said Reservation, and are situate in the county of Becker and state of Minnesota; that prior to April 24th, 1908, said lands were duly allotted to said Indian; that on said day said Indian made application to the land department of the United States for a patent to said lands in fee simple; that on August 6th, 1908, the United States issued to said Indian a patent in fee simple to said lands, which was recorded in the office of the register of deeds of Becker county, Minnesota, on November 16, 1908, in book thirty-four of deeds on page two hundred thirty-five.

8 III.

That said Me-gis-way-waish-kung was born in April or May, 1889.

IV.

That on April 24, 1908, said Indian, for a valuable consideration, made, executed and delivered to one A. C. Knudson a warranty deed

of said premises, which was recorded in the office of said register of deeds on April 27, 1908, in book thirty of deeds on page one hundred fifty-nine; that on December 1, 1908, the said A. C. Knudson made, executed and delivered to one C. F. Peterson a quit-claim deed of said premises, which was on said day recorded in the office of said register of deeds in book thirty-one (31) of deeds on page ninety-seven (97); that on December 3, 1909, the said C. F. Peterson and Emily, his wife, made, executed and delivered to one R. L. Smith a quit-claim deed of said premises, which was recorded in the office of said register of deeds on July 1, 1912, in book forty-one of deeds on page two hundred ninety; and that on October 14, 1914, said R. L. Smith made, executed and delivered to the defendant F. A. Dickson a quit claim deed of said premises.

## V.

That on January 17, 1910, said Indian made, executed and delivered to one Louis J. Carpenter a warranty deed of said premises, which was recorded in the office of the register of deeds on June 27, 1910, in book forty of deeds on page three hundred ninety-two; that through error in transcribing said deed upon said rec-
9 ord the date thereof appears in said record as June 17, 1910; that on the first day of November, 1913, said Louis J. Carpenter and Margery, his wife, made, executed, and delivered to the defendant F. A. Dickson a quit-claim deed of said premises, which was recorded in the office of said register of deeds on November 3, 1913, in book forty-six of deeds on page one hundred forty-three; that prior to giving said deed, to-wit on September 5, 1910, said Louis J. Carpenter had made, executed and delivered to one L. S. Waller a quit claim deed of said premises, and that on January 15, 1912, said L. S. Waller and M. S. Waller, his wife, made, executed and delivered to the plaintiff a quit claim deed of said premises, which was recorded in the office of said register of deeds in book forty-one of deeds on page 265; but that defendant Dickson, at the time he received his said deed from Louis J. Carpenter, had no notice or knowledge of the existence of said prior deed to said L. S. Waller, or said deed from said L. S. Waller to the plaintiff, but purchased said premises from said Carpenter in good faith and for a valuable consideration.

## VI.

That on November 23, 1911, said Indian made, executed and delivered to the plaintiff a warranty deed of said premises, which was recorded in the office of said register of deeds on December 1, 1911, in book forty of deeds on page two hundred twenty-eight, and that on July 12, 1913, said Indian made, executed and delivered to the plaintiff a warranty deed of said premises, which was
10 recorded in the office of said register of deeds on July 17, 1913, in book forty of deeds on page five hundred fifty-nine.

VII.

That said lands are vacant and unoccupied.

*Conclusions of Law.*

The Court finds as conclusions of law:

I.

That plaintiff is the owner in fee of the above described lands.

II.

That no one of the defendants has any estate or interest in said premises, or any lien thereon.

III.

That plaintiff is entitled to recover the costs and disbursements of this action to be taxed.

Let judgment be entered accordingly.

Dated February 13, 1915.

By the Court,

WILLIAM L. PARSONS,
*District Judge.*

NOTE.—Me-gis-way-waish-kung, the patentee of the lands in dispute, was a mixed-blood Chippewa Indian of the White Earth Reservation. He became of legal age in April or May, 1910. On April 24, 1908, he made application for a fee patent based upon a previous allotment, and the patent was issued August 6, 1908. Defendant Dickson derives title from two deeds made by the patentee, one dated April 24, 1908, to A. C. Knudson and one dated January 17,
11 1910, to Louis J. Carpenter. Plaintiff claims under two deeds from the Indian dated November 23, 1911, and July 12, 1913, respectively.

The deeds from the patentee to plaintiff vested title in it, provided the question of patentee's minority when he gave the deeds under which defendant Dickson claims is a proper subject of inquiry in this action and is not foreclosed by the patent.

To carry out the policy of individual allotments, which superseded the system of tribal holdings of lands among the Indians, the general Indian allotment act of February 8, 1887 (24 St. 388), made provision for the issuance to Indians in severalty, upon the approval of the allotments by the secretary of the interior, of so-called trust patents, whereby the lands conveyed were declared to be held in trust for the benefit of the patentee for a period of twenty-five years, and conveyances of such lands and any contracts touching the same

during that time were made absolutely null and void. At the expiration of the trust period the Indian would receive a fee patent to his land and thereupon would have the benefit of and be subject to the laws, both civil and criminal, of the state or territory in which he might reside.

The so-called Clapp Amendment (Act of June 21, 1906, 34 St. 325, as amended by the Act of March 1, 1907, 34 St. 1015) so far as the same applied to Mixed Blood Indians, provided as follows:

"That all restrictions as to sale, incumbrance, or taxation
12 for allotments within the White Earth Reservation in the state of Minnesota, now or hereafter held by adult mixed-blood Indians, are hereby removed, and the trust deeds heretofore or hereafter executed by the department for such allotments are hereby declared to pass the title in fee simple, or such mixed-bloods, upon application, shall be entitled to receive a patent in fee simple for such allotments."

It was under this amendment that Me-gis-way-waish-kung applied for and received his fee patent.

Neither the charge of the policy of the government in its attitude towards the Indians, which in the case of the Indians on the White Earth Reservation culminated in the 1906 amendment, nor the language of the amendment indicates any purpose on the part of the government to encourage the alienation by Indians of their lands, whatever may have been the actual result. The government's Indian policy in the final stage of its evolution emancipates the Chippewa mixed-blood of the White Earth Reservation from governmental wardship and purports to place him upon a level with other men in citizenship, opportunities and responsibilities. It gives him fee title to his land in severalty and removes all restrictions upon its sale, incumbrance and taxation, so that he is in precisely the same situation with respect to dealing with his land as any other fee owner of lands under patent from the United States. This is the natural construction of the language of the amendment. There is no in-
dication of an intent to assist the Indians in getting rid of
13 their lands, but, in pursuance of the abandonment by the government of its paternal policy toward the Indians, they are freed from restrictions in dealing with the lands. Those restrictions consisted only in the prohibition against conveyances and contracts touching the land during the trust period. Vachon v. Nichols-Chisholm Lumber Co., 126 Minn. 312.

There is no indication of an intent on the part of Congress to control or supervise in any way the disposition by the Indian of his lands acquired by patent under the 1906 amendment. The Act of 1887 expressly places the Indian under the dominion of the state laws after patent is issued, and such laws control his further dealings with the land. In the present case the laws of Minnesota respecting conveyances by minors are of undoubted application, unless the question of the Indian's age has been set at rest by the patent itself. That such is the effect of the patent is contended by the defendant Dickson, who earnestly insists that the attempt to defeat his title by showing the Indian's minority at the time he made the

deeds under which the defendant claims is a collateral attack upon the patent.

The effect and conclusiveness of a land patent issued by the United States forms the subject of numberless adjudications in the federal and state courts. Such patents constitute "safe and assured evidence of ownership" (Moore v. Robbins, 96 U. S. 532). "The patent is the highest evidence of title and is conclusive as against the government and all claiming under junior patents or titles until it
14 is set aside or annulled by some judicial tribunal" (U. S. v. Stone, 2 Wall. 525). "We hold the true principle to be this, that whenever the question in any court, state or federal, is whether a title to land which had once been the property of the United States had passed, that question must be resolved by the laws of the United States, and that whenever according to those laws the title shall have passed, then that property, like all other property in the state, is subject to the state legislation so far as that legislation is consistent with the admission that the title passed and vested according to the laws of the United States" (Wilcox v. Jackson, 13 Pet. 498).

"A patent issued by the officers of the Land Department of the United States in a case within the scope of their power or jurisdiction is dual in its effect. It is an adjudication of those officers that the patentee is entitled to the land under the laws of the United States, and it is a conveyance of the title to that land to the patentee" (U. S. v. Winona & St. P. Ry. Co., 67 Fed. 948). "(The land department) as we have repeatedly said was appointed to supervise the various proceedings whereby a conveyance of the title from the United States to portions of the public domain is obtained, and to see that the requirements of different acts of Congress are fully complied with. Necessarily, therefore, it must consider and pass upon the qualifications of the applicant, the acts he has performed, to secure the title the nature of the land and whether it is of the
15 class which is opened to sale. Its judgment upon these matters is that of a special tribunal and is unassailable except by direct proceedings for its annulment or limitation. Such has been the uniform language of this court in repeated decisions" (Steel v. Smelting Co., 106 U. S. 447). The cases of Polk's Lessee v. Wendell, 9 Cranch 87; Patterson v. Winn, 11 Wheat. 379; Johnson v. Tousley, 13 Wall. 72; Franch v. Fyan, 93 U. S. 169; Smelting Co. v. Kemp, 104 U. S. 636; Burke v. S. Pac. R. R. Co., 234 U. S. 669; McKinney v. Bode, 33 Minn. 450; O'Connor v. Gertgens, 85 Minn. 481; White & Street Townsite Co. v. J. Neils Lumber Co., 100 Minn. 16; Holland v. Netterberg, 107 Minn. 380; State v. Red River Lumber Co., 109 Minn. 185, and numerous other authorities repeat and apply the same rule. But it is not deemed applicable to the present case for the reason that no attack is here made on the patent. Both parties claim under the patent and it would seem anomalous to characterize the plaintiff's contention as an attack upon the source of its own title. The application of the rule has been confined to attempts to impeach the title of the patentee and thus undo the determination of the Land Department as to the facts anterior to the issuance of the patent. The proceedings before the officers of the Land Depart-

ment are ex parte and summary in their nature (State of Minn. v. Machelder, 1 Wall. 109). The ultimate question is whether or not a patent shall issue, and the facts found are conclusive only when the action of the department is assailed.

16 The question, as was conceded by counsel upon the argument, is the same as in the case of a conveyance by any minor patentee who has received his patent under a law which required him to be of legal age. I am unable to reach any other conclusion than that the state laws respecting minority govern conveyances by any minor patentee.

W. L. P.

(Title of Cause.)

*Settled Case.*

The above entitled action came on for trial at the general October, 1914, term of the above named court, before the Honorable William L. Parsons, judge presiding.

Messrs. C. M. Johnston, Fred Dennis and Marshall A. Spooner appearing as attorneys for the plaintiff, and Messrs. Clyde R. White and C. C. Haupt appearing as attorneys for the defendant F. A. Dickson.

It is stipulated that the records which are about to be introduced in evidence are the official records of the register of deeds office in and for Becker county, Minnesota.

Plaintiff offers in evidence the record of an instrument recorded at page 235 of deed record number 34, Becker county, Minnesota, which is a patent from the United States of America to Me-gis-way-waish-kung, and which patent is dated on the 6th day of August, 1908, and filed for record on the 16th day of November, 1908, at eleven o'clock A. M.

It is admitted that Me-gis-way-waish-kung is a mixed blood Indian.

17 Plaintiff offers in evidence the record of an instrument recorded in deed record forty of Becker county, at page 228, This is a deed from Me-gis-way-waish-kung, a single man, of Carlisle, Cumberland county, Pennsylvania, for one dollar and other valuable consideration, to the Luck Land Company, the plaintiff, a corporation, conveying lot seven, section two and the northeast quarter of the northeast quarter of section twenty-five, township 142 north, range 39 west of the 5th principal meridian, dated November 23, 1911, and which is acknowledged in the District of Columbia, county of Washington, on the 23rd day of November, 1911, before Simon Beebe, notary public, with his seal attached, and filed December first, 1911, and on which Louis J. Carpenter appears as one of the witnesses.

Plaintiff offers in evidence the record of an instrument recorded at page eight of Miscellaneous Records "O", Becker county, being a contract for deed between Me-gis-way-waish-kung and Louis J. Carpenter, recorded July 15th, 1910.

Objected to as immaterial.
Objection overruled. Exception.

Plaintiff offers in evidence a quit-claim deed dated on the 5th day of September, 1910, between Louis J. Carpenter, a single man, of the county of Pipestone, state of Minnesota, and L. S. Waller of the county of Mahnomen, state of Minnesota, for the expressed consideration of one dollar, conveying the lands in controversy; the acknowledgment of Louis J. Carpenter being taken before
18 Louis D. Davis, who also subscribed as one of the witnesses. Not recorded. The same being marked Exhibit "A."

Objected to because it has not been shown that Carpenter had any title to this land to convey and the introduction of the instrument is objected to as incompetent.
Objection overruled. Exception.

Plaintiff offers in evidence the record of an instrument, being quit-claim deed, recorded at page 265 of deed record 41 of the records of Becker county, being such a deed from L. S. Waller and M. S. Waller his wife to the plaintiff Luck Land Company, a corporation, dated January 15th, 1912, conveying the premises in controversy for an expressed consideration of $658.40, acknowledged on the 15th day of January, 1912, before Louis D. Davis, notary public, Mahnomen county, Minnesota, who also subscribed as a witness to the deed, filed April 26th, 1912.
Objection overruled. Exception.

Plaintiff offers in evidence the record of an instrument recorded in Deed Record Number 40, Becker county, Minnesota, page 559. This is a deed from Me-gis-way-waish-kung to the Luck Land Company, dated July 12, 1913, recorded July 17, 1913, the expressed consideration of one dollar and other valuable consideration, conveying the property in controversy. It is acknowledged on the day of its date before Louis D. Davis, a notary public in Mahnomen county, Minnesota, who also subscribes as a witness.

19 Mr. Houpt: This is objected to for the reason that it already appears that this grantor had previously parted with all his title in this land and therefore it is incompetent.
Objection overruled. Exception.
Plaintiff rests.

The defendant Dickson offers in evidence a warranty deed recorded in book forty of deeds in the office of the register of deeds in and for Becker county, Minnesota, page 392, from Me-gis-way-waish-kung to Louis J. Carpenter, bearing date June 17th, 1910, recorded June 27, 1910, at 10:30 o'clock A. M., and containing the same representation with regard to the grantor's being a mixed blood adult Chippewa Indian, that has been heretofore read by counsel, and reciting also a reference to the same Act of Congress, conveying the land described in this proceeding.

Mr. Spooner: That is objected to as immaterial, irrelevant and incompetent, and also, unless the full and complete instrument it-

self, recorded as one instrument, be offered in its entirety, and in connection with that objection, we offer to show at this time that this deed was mistakingly and wrongly recorded as to the date of the instrument, and we here and now present for the court's consideration in connection with this objection and with this offer the original instrument, which instrument bears the same number endorsed on its back as the record thereof, attached to the record, being Number 52593, and which bears the certificate of the register of deeds of Becker county, Minnesota, showing the record of the deed on the 27th day of June, 1910, at 10:30 o'clock A. M., as appears in the marginal note and memorandum of record by the register of deeds on the copy thereof as it appears in the records of said county, in deed record number 40 on page 392, and for the purpose of letting the record show the offer of this instrument it will be marked, if the court please, plaintiff's Exhibit "B."

Argument.

Mr. Houpt: We make the further objection that it now appears that a fee patent is issued for this land to the Indian in question and that anything contained in the deed contradictory of that patent is immaterial and ineffective for any purpose.

The Court: I think it would be best to take in all this record evidence subject to the various objections, and arguments can be made at leisure by the attorneys. I would be inclined at the present time to take in all this record evidence subject to the various objections. I am not at all sure that this is competent evidence of any recital that may be contained in it. Of course the statute makes an instrument evidence that is recorded, that is evidence prima facie, but whether it is evidence of facts extraneous to the purpose of that instrument, which is the transfer of title to real estate there is some question there, and I think it would be best to take in the evidence on this hearing subject to the objections.

Mr. Spooner: Let me ask your Honor to rule at this time on the offer of the original deed in connection with my objection; let us have a record on that.

The Court: You first made the objection to the offer of counsel and then you followed it up by your own offer.

Mr. Spooner: The offer made by us of Exhibit "B" was to lay a foundation for one of the objections which we made at the time, and I would like to have a ruling.

The Court: Would you like to have that instead of the other.

Mr. Spooner: Yes, sir.

Mr. Houpt: I have no objection to the introduction of the original instrument with the limitation that counsel has placed upon his offer.

The Court: Then it will be received for that purpose.

Mr. Spooner: Now at this time I want to take an exception to any ruling which may be hereafter entered in the record adverse to the objection made to this instrument last offered by the defendant.

The Court: In regard to the introduction of the record, I think the entire record should go in subject to your objection, Mr. Houpt,

so that the record will show the entire instrument subject to counsel's objection and exception. My theory being that I will take in all of this record evidence, at least, and at leisure, and with the assistance of briefs perhaps, pass upon the questions that are raised.

Mr. Houpt: The defendant Dickson offers in evidence next a quit-claim deed recorded in book forty-six of deeds, page 143,
22 of the records of the register of deeds of Becker county, Minnesota, bearing date November first, 1913, of the land described in the complaint herein, from Louis J. Carpenter and Margaret Carpenter his wife to the defendant F. A. Dickson, acknowledged on the first day of November, 1913, before C. F. E. Peterson, notary public, Hennepin county.

Mr. Spooner: Now, we wish to offer an objection to that instrument and that objection is that it is immaterial, irrelevant and incompetent and because no proper foundation has been laid for it, and the further objection that it appears from this instrument and by the admission of counsel, that the grantor in this instrument, Louis J. Carpenter, is the same person who was the grantee in the last instrument offered by the defendant, being the deed recorded in book forty of deeds, this county, page 392, and because it appears upon the face of such last instrument that the grantor Me-gis-way-waish-kung at the time of the acknowledgment of such last instrument was a male mixed blood Chippewa Indian, and was not an adult, but was a minor less than twenty-one years of age at the time of such execution of such instrument, and for all of the reasons and objections urged to the reception of the instrument recorded in book forty of deeds on page 392 at the time such instrument was offered. And plaintiff at this time offers in connection with such objection the original instrument, for the purpose of such objection, as the same appears in the objection made to the said deed recorded in book forty of deeds, page 392, at the time such
23 deed was offered.

The Court: Any objection of this original instrument?

Mr. Houpt: Simply for the purpose of showing the discrepancy of the date in the record.

The Court: It will be received for that purpose.

Mr. Spooner: I would like to have the same exception and record made and to do so in the record as was stated temporarily at least overruling the objection made to the former.

The Court: I have not ruled on those yet. I was simply ruling in your favor as to introducing that instrument for the purpose stated. I will receive the evidence subject to your objection and your exception to that and all similar rulings will be noted.

Mr. Spooner: And entered later in case the ruling should be adverse to us?

The Court: Yes.

The defendant Dickson offers in evidence an instrument recorded in book thirty of deeds, page 159 of the records of the register of deeds in and for Becker county, Minnesota, from Me-gis-way-waish-kung to A. C. Knudson, conveying the premises described in the

complaint, bearing date the 24th day of April, 1908, and acknowledged as of the same date, calling attention to the same recitals in it with regard to the Indian—the grantor—being a mixed blood adult Chippewa Indian and to the act of Congress heretofore alluded to in the former deeds; filed for record on the 27th day of April, 1908, at four o'clock P. M.

24 Mr. Spooner: What does that offer include?

Mr. White: Intended to include the deed recorded on that page, but not the affidavit that is not part of the instrument.

Mr. Houpt: This is the same que-tion your Honor has ruled on before.

Mr. Spooner: We have here, your Honor, an abstract of the title of this land brought down to the 5th day of February, 1914. From that abstract it does not appear that defendant Dickson derived title to the land, or purports to derive title to the land through this conveyance offered in evidence, and I desire to ask counsel at this time whether or not he proposes to show title in the defendant Dickson by or through any unrecorded instrument in the line following this transfer?

Mr. Houpt: I will say, if the court please, this offer is made, among other purposes, to show that the plaintiff here has not title to this land. Of course the plaintiff must recover upon a paper title, and that is one of the purposes of offering this record.

Mr. Spooner: We have this situation: The defendant Smith, who apparently has claimed some title under a deed from C. F. E. Peterson, who apparently has claimed a conveyance from this man Knudson, is in default in this action, and the defendant Dickson in this case is asking affirmative relief and he is not attempting to prevail in this case merely by defeating the plaintiff's title, but is also seeking relief to the effect that he is the owner. Now, I don't understand that the rule upon which counsel apparently relies fits

25 this case in the claim that in an ordinary action to determine adverse claims the defendant may defeat the plaintiff's estate by showing title in a third person. Now that is inconsistent here. We have shown our line of title——

The Court: Your position is that the defendant Dickson could not show title in a third person in any event?

Mr. Spooner: Not in a case like this where he is asking for affirmative relief showing title in himself and offered proof to that effect for that purpose.

The Court: Would that debar him from defeating your cause of action?

Mr. Houpt: Your Honor has announced that you would receive these instruments subject to the objection.

The Court: Yes, as a general proposition I intend to take in all instruments that have to do with this title in any way, or appear to have to do with the title, unless it should absolutely clearly appear that they do not. If it is going to take any time I should merely take this in subject to the objection.

Mr. Spooner: I want to let stand what I have stated as an objec-

tion to the reception of this instrument, and in addition thereto further that it already appears from the evidence offered on the part of the resisting defendant—the contesting defendant—that this instrument was executed at least two years prior to the coming of age of the grantor named in the instrument, as disclosed
26 by the evidence already, and as incompetent, irrelevant and immaterial and no foundation laid.

The Court: The instrument will be received in evidence subject to the objection.

The defendant Dickson offers in evidence an instrument recorded in book thirty-one of deeds, page 97, of the office of the register of deeds in and for Becker county, Minnesota, bearing date of December first, 1908, and acknowledged as of the same date, and recorded upon the same date, from A. C. Knudson, single man, to C. F. Peterson, and conveying by a quit-claim deed the land and premises described in the complaint in this action.

Mr. Spooner: Objected to on the ground that it is incompetent, irrelevant and immaterial, no foundation laid, and because it already appears by the testimony offered on the part of the defendant and from another instrument, a portion of which was offered, recorded in book forty of deeds on page 392, that the grantor of the same premises of the said A. C. Knudson was a minor at the time of the deed last offered from the patentee We-gis-way-waish-kung to A. C. Knudson.

The Court: It will be received subject to this objection.

Mr. Spooner: And the same exception.

The Court: That is understood; the record will show that.

The defendant Dickson offers in evidence the instrument recorded in book forty-one of deeds, page 290, in the office of the register of deeds in and for Becker county, the same being a record of
27 a quit-claim deed bearing date of December 3, 1909, acknowledged December 3, 1912, filed for record July 1st, 1912, at nine o'clock A. M., and to the property, among others, described in the complaint, from C. F. Peterson and Emily Peterson, his wife, to R. L. Smith.

Mr. Spooner: The same objection to this as to the last instrument and to each of the other instruments offered on the part of the defendant.

The Court: Received subject to the objection.

Defendant Dickson offers in evidence defendant's Exhibit "1", a quit-claim deed bearing date October 14, 1914, from R. L. Smith, a single man, to F. A. Dickson, and to the property described in the complaint herein acknowledged October 14th, 1914, not recorded as yet.

Objected to upon each of the several grounds heretofore urged as an objection to each of the several instruments heretofore offered on the part of the defense, and on the further ground that this instrument is dated and acknowledged subsequent to the commencement of this action and the interposition of the defense therein.

The Court: I would like to hear you on that.

(Arguments.)

Mr. Houpt: If the court deems it necessary we would ask that we be allowed to amend our answer so as to embrace this additional title—file a supplemental answer.

The Court: Any objection to filing supplemental answer?

Mr. Spooner: Here is the defendant R. L. Smith, the
28 grantor in this instrument, who stands here with an answer declaring that the title is in himself.

The Court: But that would not be inconsistent with the supplemental answer on the part of defendant Dickson, reciting title in him.

Mr. Spooner: A supplemental answer at this time might throw us in a position we feel where we are placed in a position where we would like to have an opportunity to examine Mr. Smith as a witness in this case, and we can't do it with a supplemental answer coming in now. Now, it is possible that a time may come in the trial of this case when there will be several matters to be inquired into, especially in view of the uncertain situation of the record here by reason of the reservation of rulings. If such a supplemental answer is filed why we certainly shall not be reluctant to ask that there be opportunity given here to offer other testimony. It is impossible for me to lay all the facts before the court in my statement at this time, but an amendment of the answer of Dickson at this time may necessarily result in requiring the plaintiff to offer proof here that might not be necessary provided the record stands as it is at the present time, and I do not believe we are prepared for an amendment of the character referred to at this time with the proof at hand. It is a matter that I am not advised of entirely because I have had no opportunity to consult with counsel on the subject, and evidently it is deemed important enough by the defense and I apprehend is important enough for the consideration of the
29 plaintiff so that we may have an opportunity to determine whether we can anticipate that situation.

The Court: At the present time it is not apparent to the court how you are surprised or embarrassed in this request to file a supplemental answer showing this transfer, and I will permit the supplemental answer to be filed, leaving it to the plaintiff, if he desires to do so to make application for opportunity to put in the proof necessitated by the filing of this supplemental answer.

Mr. Spooner: It probably will develop in putting in the testimony here so that it will be just as apparent here to your honor as to our selves.

The Court: Very well, you will have an opportunity to make the application then.

Mr. Spooner: I will like to have an exception to the ruling.

The Court: Do I understand then that a supplemental answer will be filed?

Mr. Houpt: Will it be necessary to file that immediately, or can we file that a little later.

The Court: It won't be necessary to file it today, but it will be necessary to know whether it will be filed.

Mr. Houpt: Yes, sir; it will be filed.

Mr. Spooner: I would like to make the further statement in considering this and I hope you will consider it before the ruling is made that the defendant here should state and exercise its option, if it has any, on which line of title it relies here. Now, as I understand this record—and if I am wrong I hope counsel will
30 correct me—in the first instance the defendant's title upon which it relies is obtained through this deed dated January 17th, 1910, misdated June 17th, 1910, and filed June 27th, 1910, recorded in book forty of deeds on page 392, from Me-gis-way-waish-kung to Louis J. Carpenter; and then upon the quit-claim deed based upon that conveyance from Louis J. Carpenter and Margaret Carpenter his wife to F. A. Dickson, dated November first, 1913, and filed November 3, 1913; now I want to ask if that is the title first relied upon by the defendant here?

Mr. Houpt: We stand upon whatever we purchased of these titles—all of them that we purchased. There is not any way of compelling us to elect here.

Mr. Spooner: So I understand that that is your first source of title with which you started out here?

Mr. Houpt: We have offered all the title we could get. If any of it shows that we own the land——

Mr. Spooner: Here, if your Honor please, are two inconsistent and contradictory positions. Here is the deed to Carpenter from the Indian—the mixed blood,—and a quit claim deed from Carpenter to Dickson; now that title is absolutely inconsistent with the title which they have since sought to develop in a previous deed from the mixed blood to Knudson, from Knudson to Peterson—from Peterson to Smith and Smith to the defendant Dickson dated October 14, 1914; and right at this point I am going to ask that the court require the defendant to elect upon which ones of those titles
31 it predicates its defense here.

The Court: I will hear you further in regard to that. Your position is not apparent to me at this time. It does not appear to me that they should be required to elect.

Mr. Houpt: Wouldn't the election be reciprocal then, your Honor? The plaintiff in this case has introduced titles through different channels.

Mr. Spooner: No, we have not. It all starts from this party, the mixed blood, and the last deed is simply confirmatory of the other transaction. Now this is a different proposition.

(Argument.)

Mr. Spooner: I demand now that the court order the defendant Dickson to elect upon which of those two lines of title he will stand.

The Court: The motion is denied.

Mr. Spooner: Exception.

Mr. Houpt: Now, if the court please, sufficient has appeared here to indicate that the title in this case comes through an Indian of the White Earth Indian Reservation, a patent. For the purpose of

establishing the basis upon which this patent issued—the source of the patent—and for no other purpose, I ask at this time to introduce the trust patent which preceded the fee patent—I was mistaken, we don't have the trust patent. It is on the way. But I will say that under the laws of 1887—the Act of 1887 provided for the allotment of lands to Indians, and instruments issued giving the
32 Indians right of possession in certain tracts of land in severalty and reserving the title in the United States for a period of twenty-five years. That is the instrument that was issued to this Indian that I desire to introduce, but it is not here, but I would like to reserve the privilege of introducing it when it arrives; it will be in St. Paul—or Minneapolis—by the time we return. Now, in addition to that the Act referred to here is commonly known as an Act—known as an Act to remove restrictions; it is the Act of March first 1907, amending the Act of June 21, 1906, which provided as follows (reading Act):

Now, as following up the trust patent and as showing the basis for the issuance of the fee patent I desire to introduce a certified copy of the application of the Indian in question here for a fee patent: and as a further part of this record I would desire to reserve the right to introduce the order of the secretary of the interior directing a fee patent to issue. This order is referred to in the fee patent; that also we will have at the time we return to Minneapolis; and I do that for the purpose of simply laying the foundation of showing the basis for the issuance of the fee patent.

Certified copy of application marked Exhibit "2".

Mr. Spooner: Now we want to object to that as entirely immaterial and irrelevant. The patent was issued, and the patent was issued on the condition of alienation by the patentee prescribed by the Acts of Congress. The only purpose that I can see that would inure to the defendant in this case by the introduction of
33 this application is that it may contain——

Mr. Houpt: I don't offer this document for that purpose at all, your Honor.

The Court: Offered for the limited purpose you stated.

Mr. Houpt: That is all.

Mr. Spooner: It is not competent evidence of the qualification of the mixed blood to dispose of his property.

Mr. Houpt: I don't offer it for that purpose.

Mr. Spooner: Then it is immaterial entirely.

The Court: For the limited purpose stated by counsel the instrument will be received, subject to the objection of counsel; and the same course will be taken with respect to the other instruments.

Mr. Spooner: An exception will be entered if the ruling is adverse.

The Court: The record will show that that is true in all cases.

Mr. Spooner: I desire to call the court's attention to the fact, and I object to Exhibit "2" on the further ground that it appears upon these papers and from the face of them, that this is not a record—that these are not instruments issued upon any recommendation such as is required by the rules of the department, and which will

be shown afterwards if the court has doubt on that subject, and because all through there is no proper or sufficient acknowledgment or oath in either instance where the same purports to have been taken, as required by law. There is no seal in any case and there is no evidence that these things were done in the way of taking an oath that seem to be prescribed by the rules as indicated by the
34 face of this instrument.

The Court: We will let that be a part of the objection and my ruling will remain the same.

Defendant Dickson rests.

(Testimony of Clyde R. White, Louis D. Davis, A. J. Powers, Fred Dennis, A. F. Anderson, Carl Erickson, L. S. Waller, Me-gis-way-waish-kung, Nah-wah-she-bi-ko-quay, J. A. Sealander, Wah-we-way-cumig, and C. M. Johnston, not printed except the following extracts therefrom):

Louis D. Davis, called as a witness on the part of the plaintiff and being first duly sworn, testified as follows:

Q. And what is your business?
A. I am an attorney at law.
Q. And admitted to practice law?
A. Yes, sir.
—. ——.
A. Mr. Carpenter had been working for Mr. Waller at that time; worked over a year in buying lands and such work.
Q. And straightening out titles?
A. Yes, sir. And in January, 1910, he made a deal in the first place with this Me-gis-way-waish-kung and took it in his own name, but for the benefit of Mr. Waller——
Q. January 17th, 1910?
A. Yes, sir.
Q. That is the deed that was offered in evidence here by the defense and in which the record was misstated June 17th?

34*a* A. J. Powers, called as a witness on the part of plaintiff, and being first duly sworn, testified as follows:

Q. Have you there the annuity records of 1891?
A. Yes, sir.
Q. And what is the date of that roll?
A. Covers the payment for the second quarter of 1891.
Q. Now, if you please, Mr. Powers, will you turn to that part of the record where it names this individual?
A. On page one of this annuity roll at number 4, there appears the name of Me-Gis-Way-Waish-Kung, son, age two, sex M., per capita 10.83.

ME-GIS-WAY-WAISH-KUNG, called as a witness on the part of plaintiff, and being first duly sworn, testified as follows:

Q. Who gave you that check?

Mr. White: We object to that as incompetent, irrelevant and immaterial and also object to it as in effect an effort to impeach the patent involved in this case, as an effort to impeach the judgment of the land department of the United States in a collateral proceeding, as an attempt to impeach a written instrument by parol testimony, and also upon the ground which has been generally laid heretofore in regard to this line of testimony.

NAH-WAH-SHE-BI-KO-QUAY, called as a witness on the part of plaintiff, being duly sworn testified as follows:

Q. When was the boy Me-Gis-Way-Waish-Kung born?
34b A. When I first heard that he was born, he was born in April.
Q. What year?
A. The year before the Treaty.
No cross examination.

WAY-WE-YAH-CUNIG, called as a witness on the part of plaintiff and being first duly sworn testified as follows:

Q. Did or did not you have any children born to you and to her at a date near to the Rice Treaty?
A. There was one child born just before the Treaty.
Q. Was it in the same year with the Treaty?
A. That same year that my boy was born that Mr. Rice came around and made the Treaty.
Q. Ask her what the boy's name was?
A. Me-Gis-Way-Waish-Kung.
Q. That would be in the late spring or early summer?
A. It was in the spring.
Q. In the late spring?
A. Yes, sir.

C. M. JOHNSON, called as a witness on the part of plaintiff and being first duly sworn testified as follows:

Q. Do you know the date of the Rice Treaty?
A. I do; I know when they were here.
Q. When was that?
A. In the year 1889. I think they were here in June or July, perhaps both months and I don't know but what into August.
35 A. Yes, sir.

Mr. Spooner: Here are two things we are going to prove. We are going to prove as an independent fact and as an independent issue, but also connected with this matter here, that this mixed blood was not in fact of age until the 16th day of May, 1910. We are going to show as another independent fact, but immediately connected with

this, that Simon Michelet was told of and had knowledge of the existence of the unrecorded conveyance from Carpenter to Waller and from Waller to the Luck Land Company.

The Court: But does this bear upon that question?

Mr. Spooner: It certainly does.

The Court: I understood you to say that this was along the line of showing notice on the part of the alleged agent or representative of Dickson. I would not want to go too far afield here, but I am willing to go into this question of notice, if you can show it.

Mr. Spooner: I am going to show that the existence of the Carpenter deed and the reason why it was not relied upon, because he was a minor, was told to Mr. Michelet, and then that the contract was made subsequently to take its place. That is what we are going to show.

Mr. Houpt: Now, if the court please, in relation to the minority of this mixed blood it is the position of the defendant here that the question of that minority is settled, and it is settled beyond the power of this court or any court in a proceeding of this kind
36 to question. It is settled just as a judgment of the court settles a question.

Mr. Spooner: May I ask counsel, so I may understand, by the introduction of this last exhibit?

Mr. Houpt: By the introduction of the patent. The question is objected to on the ground that the issue of minority is foreclosed, and this court is precluded from going into that question and investigating it, by the action of the secretary of the interior, by issuing the patent.

(Argument.)

Mr. Houpt: I desire to take an exception to your Honor's ruling and have it further understood that any further testimony offered in the case bearing upon the question of the age of the Indian involved in this case is objected to as incompetent, immaterial and irrelevant for the reason that the question of the age of this Indian was submitted to the determination of the secretary of the interior and that he found as a fact, which was within his jurisdiction, that the Indian was an adult mixed blood, and in confirmation of that finding the patent in fee was issued to this Indian, and that the issuance of that patent based upon that finding and the application for a patent in evidence here is conclusive of the question of the Indian's age in the trial of this action, and any testimony which is introduced it will be considered it is excepted to.

The Court: We can remain here and secure his testimony if desired.

Ruling reserved.

It is stipulated that defendant's Exhibits "1" and "2" may
37 be withdrawn from the possession of the reporter for use in a case to be tried in the District Court in Mahnomen county involving the land there situated, and that a true, full and correct copy thereof may be substituted therefor.

ME-GIS-WAY-WAISH-KUNG, called as a witness on the part of the plaintiff and being first duly sworn, testified as follows:

Q. Who gave you that check?

Mr. White: We object to that as incompetent, irrelevant and immaterial and also object to it as in effect an effort to impeach the patent involved in this case, as an effort to impeach the judgment of the land department of the United States in a collateral proceeding, as an attempt to impeach a written instrument by parol testimony, and also upon the ground which has been generally laid heretofore with regard to this line of testimony.

The Court: It may be received subject to the objection.

It is stipulated that should any of the original exhibits be desired by counsel introducing the same copies may be substituted and originals withdrawn from the files.

Mr. White: We now wish to offer in evidence the documents referred to by Mr. Houpt. Plaintiff offers in evidence Exhibit "3", being a copy of the original which, with counsel's consent, I am offering in place of the original for the reason that I desire to use the original in other cases.

Mr. Spooner: Objected to on the same ground that we did
38 to the introduction of Exhibit "2", and also on the ground, if it was not covered by that objection, that it is immaterial and irrelevant.

The Court: My ruling will be the same as it was on the admission of Exhibit "2".

Mr. White: I also move the court for judgment upon the ground that the plaintiff has failed to establish a right of action in the first instance, or a defense to the facts proved by the defendant in pursuance of its answer in the second instance.

Motion denied. Exception.

Exhibits in case not printed except as follows, are on file with clerk.

DEFENDANTS' EXHIBIT "2."

DEPARTMENT OF THE INTERIOR.
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, October 13, 1914.

I, C. F. Hauke, Acting Commissioner of Indian Affairs, do hereby certify that the papers hereto attached are true copies of the originals as the same appear of record in this office.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of this office to be affixed, on the day and year first above written.

C. F. HAUKE,
*Acting Commissioner.*

United States of America
1892
Office of Indian Affairs.

39 STATE OF MINNESOTA,
*County of Becker, ss:*

Jos. A. Morrison, being first duly sworn upon his oath deposes and says that he is 36 years of age, and that he is now and for the 36 years last past has been a resident of the White Earth Reservation, in the State of Minnesota; that he is personally well acquainted with Me-gis-way-waish-kung or George Wah-we-yay-cumig who is the allottee of and the grantee named and described in Trust Patent No. 4254, covering the S. E. ¼ of S. E. ¼ of Sec. 32, Twp. 144, Rge. 41 and the Lot numbered 1, of Sec. 5, Twp. 143, Rge. 41, the same being his original allotment and that he is also the allot-ee of the grantee named in Trust Patent No. 2169, covering the N. E. ¼ of N. E. ¼, Sec. 25, Twp. 142, Rge. 39 and Lot 7, Section 2 Twp. 142, Rge. 39, the same being his additional allotment upon the White Earth Indian Reservation, in the State of Minnesota.

Affiant further says that he knows of his own personal knowledge that the aforesaid Me-gis-way-wais-kung or George Wah-we-yay-cumig is an adult mixed-blood Indian, being more than 21 years of age, and whose allotment is upon the White Earth Reservation, in the State of Minnesota.

Affiant further positively says that all the statements above made are true and correct, and that he bases the same upon his own personal acquaintance with the allot-ee above named and upon his own personal knowledge of his family history.

40 Further deponent sayeth not.

JOS. A. MORRISON.

In presence of
W. A. DU KRIES.
J. E. PERRUELT.

Subscribed and sworn to before me this 12 day of May A. D. 1908.

J. E. PERRUELT,
*Notary Public, Becker Co., Minn.*

10-13-14/H. K. W.

*Affidavit as to the Status of Me Gis Way Waish Kung.*

STATE OF MINNESOTA,
*County of Becker, ss:*

Wah we yay cumig and Nah wah she bik o quay of lawful age, each being first duly sworn, say:

That affiants are well acquainted with Me gis way waish kung who is the identical Indian of the Chippewa Tribe of Indians residing on the White Earth Indian Reservation to whom a Trust Patent or other Patent containing restrictions upon alienation was issued for his original allotment No. 4254, covering the S. E. ¼ of S. E. ¼ of Sec. 32, Twp. 144, Rge. 41 and Lot 1, of Sec. 5, Twp.

14? Rge. 41, West of the 5th P. M., and that he has selected for his ac[illegible]nal allotment the following described land situated in the County of Becker, State of Minnesota, to-wit: N. E. ¼ of N. E. ¼ of Sec. 25, Lot 7 of Sec. 2 in Twp. 142, Rge. 39, West of the 5th P. M., carried on the Additional Allotment Schedule as No. 2169.

41 Affiants further say that they are well acquainted with the family history of the said Me-gis-way-waish-kung, Wah-we-yay-cumig one of the affiants hereof being his natural — ; that he, the said Me gis way waish kung, is twenty-two (22) years of age and is a mixed blood Indian whose allotment is within the White Earth Reservation, in the State of Minnesota.

Affiants further say that they are each residents of Becker County, State of Minnesota, and have been for the last 40 years, and are members of the Chippewa Tribe of Indians.

WA WE YAY CUMIG.
NAH WAH SHE BIK O QUAY.

Witness
GEORGE FOX.
H. S. DAHLEN.

Subscribed and sworn to before me this 23rd day of April A. D. 1908.

H. S. DAHLEN,
*County Auditor, Becker County, Minn.*

10-WLB-13.

FLANDREAU, S. DAK., April 24th, 1908.

Supt. & Special Disbursing Agent, White Earth, Minn.

DEAR SIR: I hereby make application for a fee simple patent covering my original allotment described as follows: S. E. ¼ of S. E. ¼, Section 32, township 144, Range 41, and Lot 1, section 5, township 143, range 41, also for my additional allotment described as

42 follows: Lot 7, section 2, Township 142, range 39 and the N. E. ¼ of N. E. ¼, section 25, township 142, of range 39, all west of the fifth principal Meridian, in Minnesota.

10-IMH-13-14.

ME GIS WAY WAISH KUNG.
GEORGE WAH WE YAY CUMIG.

*Affidavit.*

STATE OF SOUTH DAKOTA,
*County of Moody, ss:*

Me-gis-way-waish-kung, or George Wah-we-yay-cumig, being first duly sworn, deposes and says that he is the identical person named in trust patent No. 4254 and the grantee therein; that the land covered in said trust patent is described as follows: South east — of S. E. of Sec. 32, T. 144, R. 41, and Lot 1, Sec. 5, T. 143, R. 41. That the same was selected by him as his original allotment. That he

is also the owner and person named in Trust Patent No. 2169, and the grantee named therein, covering the following described land, lot 7, of Sec. 2, and the N. E. ¼ of N. E. — of Sec. 25 T. 142, R. 39, all being situated upon the White Earth Reservation in the State of Minnesota.

Deponent further says that he is a mixed blood Chippewa Indian belonging upon the White Earth Reservation, and a member of the Mille-Lac band of Chippewas.

That he is more than 22 years of age, and an allot-ee of
43 the White Earth Reservation.

ME-GIS-WAY-WAISH-KUNG.
GEORGE WAH-WE-YAY-CUMIG.

Witness:
WARREN G. COWLES.
GEO. FOX.

Subscribed and sworn to before me this 24th day of April A. D. 1908.

WARREN G. COWLES,
*Notary Public, Moody Co., So. Dak.*

My commission expires March 21, 1912.

STATE OF SOUTH DAKOTA,
*County of Moody, ss:*

George Fox, being first duly sworn upon his oath, deposes and says, that he understands and speaks the Chippewa Indian language fluently. That he read and carefully interpreted and explained to Me-gis-way-waish-kung, or George Wah-we-yay-cumig the contents of the foregoing affidavit, before he signed the same, and that he stated then and there that he fully understood its purport.

GEORGE FOX.

Subscribed and sworn to before me this 24th day of April, A. D. 1908.

WARREN G. COWLES,
*Notary Public, Moody Co., S. D.*

10WWW-13-14.

44 STATE OF MINNESSOTA,
*County of Becker, ss:*

Stephen Caswell and Lewis Caswell of lawful age, each being first duly sworn, say:

That affiants are well acquainted with Me-gis-way-waish-kung or George Wam-we-yay-cumig who is the identical Indian of the Chippewa Tribe or Band of Indians belonging upon the White Earth Indian Reservation, in the State of Minnesota, to whom a trust or other patent containing restriction upon alienation was issued for his original allotment No. 42544, covering the S. E. ¼ of the S. E. ¼

of Sec. 32, Twp. 144, Rge. 41 and Lot 1, of Sec. 5, Twp. 143, Rge. 41. West of the 5th P. M., and that he has selected for his additional allotment the following described land situated in the County of Becker, State of Minnesota, to-wit: N. E. ¼ of N. E. ¼ of Sec. 25, Twp. 142, Rge. 39 & Lot 7, of Sec. 2, Twp. 142, Rge. 39 West of the 5th P. M., in Minnesota.

Affiants further say that they are personally well acquainted with the family history of the said Me-gis-way-waish-kung or George Wah-we-yay-cumig, and that he is a mixed blood Chippewa Indian whose allotment is upon the White Earth Reservation, in Minnesota, and that he is more than 22 years of age.

Affiants further say that they are each residents of that portion of the White Earth Reservation lying within the County of Becker, in the State of Minnesota, and that they have been for over
45 29 years last past, and are members of the Chippewa Tribe or Band of Indians residing upon said Reservation.

STEPHEN CASWELL.
LEWIS CASWELL.

In Presence of—
A. C. KNUDSON.
W. A. LUFKINS.

Subscribed and sworn to before me this — day of May A. D. 1908.

J. E. PERRUELT,
*Notary Public, Becker C., Minn.*

Expires Dec. 16, 1914.
B. S.-10-13-14.

101765–08.
33129 –08 I. O.
4254 & 2169.

The United States of America to all to Whom These Presents shall Come, Greeting:

Whereas, there has been deposited in the General Land Office of the United States an order of the Secretary of the Interior directing that fee simple patent issue to Me-gis-way-waish-kung, a Chippewa Indian, for the Southeast Quarter of the Southeast Quarter of Section Thirty-two, in Township One Hundred Forty-four North, and the Lot One of Section Five in Township One Hundred Forty-three North of Range Forty-one West, and the Lot Seven of Section Two and the Northeast Quarter of the Northeast quarter of Section
46 Twenty-five in Township One Hundred Forty-two North of Range Thirty-nine west of the Fifth Principal Meredian, Minnesota, containing one hundred fifty-six and ninety-three hundredths acres,

Know Ye Now, that the United States of America, in consideration of the premises, has given and granted, and by these presents does give and grant, unto the said Me-gis-way-waish-kung, and to

his heirs, the lands above described. To Have and to Hold the Same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature thereunto belonging, unto the said Me-gis-way-waish-kung, and to his heirs and assigns forever.

In Testimony Whereof, I, Thoedore Roosevelt, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed. Given under my hand, at the City of Washington, the sixth day of August, in the year of our Lord one thousand nine hundred and — and of the Independence of the United States the one hundred and eight.

By the President, T. ROOSEVELT,
By W. M. YOUNG, *Secretary.*
JOHN O'CONNELL,
*Acting Recorder of the General Land Office.*

[Seal of the United States General Land Office.]

203420.
B.
M. F. H.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., August 16, 1908.

47 I hereby certify that the annexed copy of Patent is a true and literal exemplification from the record in this office. In Testimony Whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed at the City of Washington the day and year above written.

[SEAL.]

JOHN O'CONNELL,
*Acting Recorder of the General Land Office.*

Filed for record the 16th day of November, A. D. 1908, at 11 o'clock A. M. and recorded in Book 34 of Deeds, page 235.

PHILLIP S. CONVERSE,
*Register of Deeds.*

4–207.

460650
"B"
R. G. D.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., Oct. 16, 1914.

I hereby certify that the annexed copies of letter and record of patent, are true and literal exemplifications from the original letter and record of patent on file in this office.

In Testimony Whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[United States General Land Office Seal.]

D. K. PARROTT,
48 *Acting Assistant Commissioner of the General Land Office.*

6-3451

460650-1

Refer in Reply to the Following:

Land
33129-1908
E. S. S.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, May 23, 1908.
A. G. E.

Subject: Application for Patent in fee simple.

The Honorable The Secretary of the Interior.

SIR: Under date of May 14, 1908, the Unted States Indian Agent, White Earth Agency, Minnesota, forwarded the application of Megis-way-waish-kung for a patent in fee simple to his original and additional allotments described as follows:

Received May 26, 1908.
[SEAL.] G. L. O.

Additional allotment, No. 2169: The Lot numbered 7 of Sec. 2 and the N. E. ¼ of the N. E. ¼ of Sec. 25 in Township 142 North of Range 39 West of the 5th P. M. Minnesota, containing 77 acres.

Original allotment, No. 4254: The S. E. ¼ of the S. E. ¼ of Sec. 32 in Township 144 North, and the Lot numbered 1 of Section 5 in Township 143 North of Range 41 West of the 5th
49 P. M. in Minnesota, containing 79.93 acres.

The application is based on the Act of June 21, 1906 (34 Stat. L., 325). The report shows that the applicant is a mixed blood and entitled to a patent in fee.

460650-2

It is therefore recommended that you cause the Commissioner of the General Land Office to issue a patent in fee simple to the allottee for the land described in the inclosed trust patents. When issued it should be sent to this office for delivery.

Very Respectfully,

C. H. FARRELL,
*Acting Commissioner.*

May 25, 1908.

Approved and referred to the Commissioner of the General Land Office for action in accordance with the foregoing recommendation.

J. E. WILSON,
*Assistant Secretary.*

(Record of Patents.)

The United States of America, 2169. To all to whom these presents shall come, Greeting:

Whereas, There has been deposited in the General Land Office of the United States a schedule of allotments approved by the Secre-

tary of the Interior September 13, 1907, whereby it appears that Me Gis Way Waish Kung, an Indian of the Mille Lac Chippewa tribe or band, has been allotted the following-described
50 land:

The Lot Seven of Section two and the northeast quarter of the northeast quarter of Section twenty-five in Township one hundred forty-two north of Range thirty-nine west of the Fifth Principal Meridian, Minnesota, containing seventy-seven acres:

Fee Patent Issued—08-101765.

Now Know Ye, That the United States of America, in consideration of the premises, has allot-ed, and by these presents does allot, unto the said Me gis way wiash kung the land above described, and hereby declares that it does and will hold the land thus allotted (subject to all statutory provisions and restriction) for the period of twenty-five years, in trust for the sole use and benefit of the said Me gis way waish kung or in case of his decease, for the sole use of his heirs, according to the law of the State or Territory where such land is located, and that at the expiration of said period the United States will convey the same by patent to said Indian, or his heirs, as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever: Provided, That the President of the United States may, in his discretion, extend the said period.

In Testimony Whereof, I, Theodore Roosevelt, the President of the United States of America, have caused these letters to be made Patent, and the seal of the General Land Office to be hereunto affixed. 460650. Given under my hand, at the city of Washington, the sixth day of February, in the year of our Lord one
51 thousand nine hundred and eight, and of the Independence of the United States the one hundred and thirty-second.

By the President: THEODORE ROOSEVELT.

[SEAL.] By M. W. YOUNG, *Secretary.*

H. W. LANFAD,
*Recorder of the General Land Office.*

6–1078

(Title of Cause.)

*Stipulation for Settlement of Case.*

It is hereby stipulated that the foregoing proposed case consisting of one hundred ten (110) pages of typewritten matter, 22 exhibits and copies of records may be taken as conformable to the truth and as containing all the evidence offered or introduced on trial of this cause, and all objections, ruling, orders and all other proceedings of such trial, and the same may be settled and allowed as a settled case by Hon. W. L. Parsons without notice.

Dated July 23rd, 1915.

MARSHALL A. SPOONER and
FRED DENNIS,
*Attorneys for Plaintiff.*
CLYDE R. WHITE,
*Attorney for Defendants.*

(Title of Cause.)

*Certificate of Settlement of Case.*

I hereby certify that the foregoing case consisting of one hundred ten pages of typewritten matter, 22 exhibits and copies of
52 records, has been examined by me and found conformable by truth and to contain all the evidence offered or introduced on the trial of this cause, and also all the objections, rulings, orders and all other proceedings of such trial, and I hereby settle and allow same as settled case herein.

Dated July 28, 1915.

WILLIAM L. PARSONS, *Judge.*

(Title of Cause.)

*Notice of Motion for Amendment of Conclusions of Law and Order for Judgment or for a New Trial.*

You will please take notice, that — the settled case herein, the defendant F. A. Dickson, will move the above named court in its chambers in the court house in the city of Fergus Falls, Otter Tail county, Minnesota, on Wednesday, the 28th day of July, A. D. 1915, at ten o'clock A. M. or as soon thereafter as the counsel can be heard, for an order, amending the conclusions of law and order for judgment herein, with costs, on the ground that they are not justified by the findings of fact, for the reason, among others that a third finding of fact to the effect that Me-gis-way-waish-kung was born in April or May, 1889, is a finding of fact upon a question not in the issue in this case, in that, under the constitution and laws of the United States, the patent issued to the said Me-gis-way-waish-kung and in evidence in this case is conclusive on the
53 question of said Indian's age, in so — that the conclusion of law will read as follows, to-wit:

"1. That defendant F. A. Dickson is the owner in fee of above described premises.

2. That neither plaintiff nor any other of the defendants has any right, title, estate or interest in or lien on said lands and said premises.

3. That defendant F. A. Dickson is entitled to recover the costs and disbursements of this action to be taxed. Let judgment be entered accordingly,"

and, if that is denied then for an order vacating the decision of the court herein and granting a new trial, with costs, on the following grounds:

1. That the decision is not justified by the evidence and is contrary to law.

2. That the following findings of fact are without the issues, namely, the finding, "That said Me-gis-way-waish-kung was born in April or May, 1889."

3. Errors of law occurring at the trial and duly excepted to at the time.

CHARLES C. HAUPT,
507-508 *Commerce Building,*
*St. Paul, Minnesota;*
CLYDE R. WHITE,
314 *Minnesota Loan & Trust Bldg.,*
*Minneapolis, Minnesota,*
*Attorneys for Defendant F. A. Dickson.*

To Fred Dennis, Esq., Detroit, Minnesota, and Marshall A. Spooner, Esq., Bemidji, Minnesota, attorneys for plaintiff.

54 (Title of Cause.)

*Order Denying Defendant Dickson's Motion to the Conclusions of Law and Order for Judgment or for a New Trial.*

A motion for an order amending the conclusions of law and the order for judgment herein, with costs, or if that were denied for an order vacating the decision of the court herein and granting a new trial, with costs, having been made by the defendant F. A. Dickson, Messrs. Charles C. Haupt, Esq., and Clyde R. White, Esq., appearing for the defendant Dickson, and Messrs. Marshall A. Spooner, Esq., and Fred Dennis, Esq., appearing for the plaintiff, in opposition to the said motion,

It is ordered that the said motion be and the same is hereby wholly denied both as to the amendment of the conclusions of law and order for judgment herein and as to the order vacating the decision herein and granting a new trial.

Dated July 28, 1915.

WILLIAM L. PARSONS, *Judge.*

Stay of 20 days is hereby granted.

WILLIAM L. PARSONS, *Judge.*

55 (Title of Cause.)

*Notice of Appeal to Supreme Court.*

To Fred Dennis and Marshall A. Spooner, attorneys for the plaintiff:

Take notice, that the defendant F. A. Dickson, appeals to the Supreme Court from the order in the above entitled action, made and entered on the 28th day of July, 1915, denying defendants' motion in the alternative for an order, amending the conclusions of law and the order for judgment herein, with costs, or for an order vacating

the decision of the court herein, and granting a new trial, with costs. Dated August 14, 1915.

CLYDE R. WHITE,
314 *Minn. Loan & Trust Bldg., Minneapolis, Minn.;*
CHARLES C. HOUPT,
507-508 *Commerce Building, St. Paul, Minn.,*
*Attorneys for Defendant, F. A. Dickson.*

(Endorsed:) Due service of the within notice of appeal, upon us, at the City of Detroit, Minnesota, this 17th day of August, 1915, is hereby admitted. Fred Dennies, M. A. Spooner, Attorneys for plaintiff. Due service of the within notice of appeal, admitted this 19th day of August, 1915. J. L. Ketten, Clerk of District Court. Filed Aug. 19, 1915. J. L. Ketten, Clerk of District Court.

56 STATE OF MINNESOTA,
*County of Becker:*

In District Court, Seventh Judicial District.

LUCK LAND COMPANY, a Corporation, Plaintiff,
vs.
C. J. MINOR, F. A. DICKSON, and R. L. SMITH; Also All Other Persons Unknown Claiming Any Right, Title, Estate, Interest, or Lien, in the Real Estate Described in the Complaint Herein, Defendants.

Bond for Stay on Appeal to Supreme Court.

Know all men by these presents, that we, F. A. Dickson, as principal, and the United States Fidelity & Guaranty Company as surety, are bound unto the Luck Land Company, a corporation, the defendant in the above entitled action, in the sum of two hundred fifty ($250.00) dollars, for the payment of which to the said Luck Land Company, its successor and assigns, we jointly and severally bind ourselves our successors our executors our administrators.

The Condition of this obligation is such that whereas the defendant F. A. Dickson in the above entitled action has appealed to the Supreme Court, from an order filed in said action on the 28th day of July, 1915, denying said defendant's motion in the alternative for an order amending the conclusions of law and order for judgment herein, with costs, or for an order vacating the decision of the court herein, and granting a new trail, with costs.

Now, therefore, if the defendant shall pay the costs of said appeal, and the damages sustained by respondent in consequence thereof, if said order, or any part thereof is affirmed, or said appeal dismissed, and abide and satisfy the judgment or order which the Appellate Court may give therein, then this obligation, which is given in pursuance of the General Statutes of 1913, Section 8003, shall be void; otherwise shall remain in full force.

In testimony whereof, we have unto set our hands and seals, this day of August, 1915.

F. A. DICKSON.

In presence of
CLYDE R. WHITE.
IDA LEHAM.

57 B. W. SCALLEN.
L. O'DONNELL.

UNITED STATES FIDELITY AND GUARANTY COMPANY,
By WIRT WILSON,
*Its Attorney-in-Fact, and*
GEORGE E. MURPHY,
*Its Attorney-in-Fact.*

(Corporate Seal.)

STATE OF MINNESOTA,
*County of Hennepin, ss:*

On this 27th day of August, 1915, before me a Notary Public within and for said county, personally appeared F. A. Dickson, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

[NOTARIAL SEAL.] ALEX. L. GRANT,
*Notary Public, Hennepin County, Minn.*

My commission expires Sept. 9th, 1921.

STATE OF MINNESOTA,
*County of Hennepin, ss:*

On this 27th day of August, 1915, before me a Notary Public within and for said County and State, personally appeared Wirt Wilson and George E. Murphy, to me personally known who being by me duly sworn upon oath did say that they are the Agents and Attorneys in Fact of and for the United States Fidelity and Guaranty Company, a corporation of Baltimore, Maryland, created, organized and existing under and by virtue of the laws of the State of Maryland; that the corporate seal affixed to the foregoing within instrument is the seal of said Company; that the said seal was affixed and said instrument was executed by authority of its Board of Directors; and the said Wirt Wilson and George E. Murphy did acknowledge that they executed the said instrument as the free act and deed of said Company.

[NOTARIAL SEAL.] BLANCHE W. SCALLEN,
*Notary Public, Hennepin County, Minn.*

My commission expires Feb. 1, 1916.

(Endorsed:) I hereby approve the within Bond and the surety thereon. Dated August 30, 1915. William L. Parsons, Judge. Filed Aug. 31, 1915. J. L. Ketten, Clerk of District Court.

58 STATE OF MINNESOTA,
*County of Becker, ss:*

District Court, Seventh Judicial District.

I, J. L. Ketten, Clerk of the District Court, Becker County and State of Minnesota, do hereby certify and return to the Honorable the Supreme Court of said State, that I have compared the foregoing and attached paper writing with the original Notice and Bond on Appeal, together with the enforcements thereon, in the action therein entitled, now remaining of record in my office, and that the same is a true and correct copy and transcript of said originals and the whole thereof.

Witness my hand and seal of said Court, at the City of Detroit, Minnesota, this 1st day of September, A. D. 1915.

[SEAL.] J. L. KETTEN, *Clerk.*

(Endorsed:) Filed Sep. 11, 1915. I. A. Caswell, Clerk.

59 STATE OF MINNESOTA:

In Supreme Court, April 1916, Term.

LUCK LAND COMPANY, a Corporation, Respondent,
vs.
C. J. MINOR et al., Defendants; F. A. DICKSON, Appellant.

*Assignments of Error.*

I.

The trial court erred in permitting A. J. Powers, Wah-we-yah-cumig, Wah-way-she-bi-ko-quay and C. M. Johnson and others to testify over defendant Dickson's objection that the Indian Me-gis-way-waish-kung or George Wah-we-yea-cumig was born in April or May, 1889 (P. B., ff. 100a-100f and 107-108) for the reason that the age or minority of said Indian was not within the issues of said action.

60 II.

The trial court erred in denying defendant Dickson motion for judgment made at the close of all the testimony (P. B., f. 112), for the reason that the evidence at that time, since the Indian's age was not in issue properly, showed title to the lands involved was in the defendant Dickson.

III.

The trial court erred in including in its findings of fact, the findings, "That the said Me-gis-way-waish-kung was born in April or May, 1889" (P. B., f. 22), for the reason that such finding was and is outside of the issues in this action.

IV.

The trial court erred in finding as a conclusion of law, "That plaintiff is the owner in fee of the above described lands" (P. B., f. 29), for the reason that said conclusion of law is not justified or sustained by the findings of fact, unless the findings of fact as to the Indian's age is a proper issue in this case, which the appellant denies.

V.

The trial court erred in finding as a conclusion of law "That no one of the defendants has any estate or interest in said premises or any lien thereon" (P. B., f. 28), for the reason that such con-
61 clusion of law is not justified or sustained by the findings of fact, unless the finding of fact above noted as to the Indian's age or minority is a proper and legitimate issue in this case, which appellant denies.

VI.

The trial court erred in finding as a conclusion of law "That plaintiff is entitled to recover the costs and disbursements of this action to be taxed" (P. B., f. 29), for the reason that the same is not sustained or justified by the findings of fact nor by the previous conclusions of law, upon which it must rest unless the court's finding of fact as to the Indian's age was a proper and legitimate issue in this case, which appellant denies.

VII.

The trial court erred in ordering judgment according to the foregoing conclusions of law (P. B., f. 29), that is for the plaintiff, for the reason that said order for judgment is not authorized or sustained by the conclusions of law or findings of fact herein, since the question of the Indian's minority was not properly within the issues of this case.

VIII.

The trial court erred in denying the defendant Dickson's motion for an order amending the conclusions of law and the order for judg-
ment, so that they would read as in folio 157 of the printed
62 Record (P. B., ff. 155-159 and 160-162) for the reason that the question of the Indian's age or minority was not within the issues of this case and without such finding the conclusions of

law and order for judgment are not sustained or justified by either the evidence or the finding of fact and should have been amended as requested.

IX.

The trial court erred in denying defendant Dickson"s motion for a new trial (P. B., ff. 155-159 and 160-162), for the following reasons: (1) That the decision of the court was not justified by the evidence since the issue of the Indian's age or minority was not properly before the court; (2) For the reason that the decision is contrary to law in that it proceeds and rests upon the assumption of law that the question of the Indian's age or minority was open to the determination of the court and that the determination of that issue was determinative of the rights of the parties to said action; (3) For the reason that the finding of fact, "That said Me-Gisway-waish-kung was born in April or May, 1889" was without the issues of the case; (4) For the reason that the trial court erred in admitting the testimony of A. J. Powers, Way-we-yah-cunig, Nah-Wah-She-Bi-Ko-Quay and C. M. Johnston, and others to the effect that said Indian, Me-gis-way-waish-kung or George-Wan-We-Yea-Cumig was born in April or May, 1889 (P. B., ff. 100a-100f and 100-108).

CHARLES C. HAUPT,
1015 *Merchants Natl. Bank Bldg.,*
*St. Paul, Minnesota.*
CLYDE R. WHITE,
509-14 *Minn. Loan & Trust Bldg.,*
*Minneapolis, Minnesota,*
*Attorneys for Appellant.*

[Endorsed:] Filed Mar. 13, 1916. I. A. Caswell, Clerk.

63

LUCK LAND CO., Respondent,
vs.
C. J. MIXOR et al, Defendants; F. A. DICKSON, Appellant.

*Syllabus.*

In issuing a patent to land in fee simple to a mixed blood Chippewa Indian of the White Earth Indian Reservation, the officials of the United States necessarily determined that the Indian was an adult. Such determination is conclusive as to the Indian's right to take and hold title, except in a direct action to set aside the patent.

The issuance of the patent, while in adjudication of the patentee's right thereto, and of his title to the land, does not prevent the courts of this state from inquiring into the question of the Indian's age for the purpose of determining the validity of the conveyance from him.

Under the federal statutes after a patent in fee is issued to an Indian questions as to the validity of his subsequent transfers of the land are controlled by the laws of the state.

Affirmed.

*Opinion.*

This is an action to determine adverse claims to certain real estate in Becker county. Plaintiff claims title to the property while defendant Dickson insists that the title is in him. Both claim under the Indian Me-gis-way-waish-kung. The trial court decided in favor of the plaintiff, and defendant Dickson appeals from an order denying his motion to amend the conclusions of law and order for judgment, or for a new trial.

The Indian is a mixed blood Chippewa of the White Earth Indian Reservation. The lands in controversy are within the reservation, and prior to April 24, 1908, were allotted to the Indian. On that day he applied for a patent to the lands in fee simple, and on August 6, 1908, this patent was issued by the United States to the Indian.

The patent was recorded in Becker County November 16,
64 1908. Defendant Dickson claims title under two deeds from the Indian, one made April 24, 1908, the other January 17, 1910. Plaintiff claims title under two subsequent deeds from the Indian, dated respectively, November 23, 1911, and July 2, 1912.

The trial court found as a fact that the Indian was born in April or May, 1889, and therefore was a minor at the time he gave the deeds under which defendant Dickson claims title. On the theory that the Indian had a right to avoid these deeds after he became of age, and did so when he gave the deeds under which plaintiff claims, it was held that plaintiff had the title. The finding as to the age of the Indian is not assailed as being against the evidence, nor does defendant question the result reached, if it can be held that it was open to prove that the Indian was a minor. The claim of defendant is that the United States, when it issued the patent, found that the Indian was an adult, and that this finding is conclusive. It is true that there was this finding, as the law required that the patentee be an adult. It is correct that the Indian's title could not be attacked on the ground that he was under age when the patent issued. The patent is conclusive evidence of title in the patentee as against the government and all claiming under junior patents or titles until it is set aside or annulled by some judicial tribunal. Steele v. Smelting Co., 106 U. S. 447. Many other authorities might be cited to these propositions, but they are so well settled and undisputed that it is unnecessary.

But there is no case holding that the validity of transfers by the patentee may not be attacked by showing his incapacity, for minority or any other reason, to make a valid transfer. There is no case holding that the finding of the secretary of the Interior or the land department that the Indian is an adult settles this question for all purposes and for all times. It settles it conclusively in so far as the right of the Indian to take and hold title is concerned, but the department has not attempted to adjudicate the capacity of the Indian to transfer his title.

When the lands were conveyed to the Inidian by a patent in fee he

became the absolute owner, and his title was unassailable.
65 But in his further dealings with the property the laws of the state, not those of the federal government, control. The act of Congress of February 8, 1887, (24 Stat. at Large 388), and the act of May 8, 1906, 34 Statutes at Large, 182, provided that when lands were conveyed to Indians by patent in fee, each and every allottee shall have the benefit of and be subject to the laws of the state or territory in which they may reside. The Clapp Amendment of 1906 and 1907, 34 Statutes at Large, 325, 1015, provided "that all restrictions as to the sale, encumbrance or taxation of allotments within the White Earth Reservation heretofore or hereafter held by adult mixed blood Indians are hereby removed and the trust deeds heretofore or hereafter executed by the department for such allotments are hereby declared to pass title in fee simple." The suggestion that by the Clapp Amendment Congress intended to remove any restrictions as to the sale of their lands by Indians except those that the federal government had heretofore imposed is without merit. There can be no doubt, both under the language of the Acts of February 8, 1887 and of May 8, 1906, and under the decisions, that the validity of sales or transfers by the Indian is a matter to be determined by the state law.

It follows that the courts of this state are not precluded from inquiring into the age of an Indian patentee for the purpose of determining the validity of a conveyance from him, or for any other purpose save to impeach his title to the land. The conclusion necessarily follows that the trial court was right in holding that the question of the Indian's age was open in this case, and the finding on that question not being attacked, the result reached by the trial court was clearly correct.

Order affirmed.

BUNN, *J.*

(Endorsed:) Filed April 28, 1916. I. A. Caswell, Clerk.

66 State of Minnesota, Supreme Court, April Term, A. D. 1916.

No. 31.

LUCK LAND COMPANY, Respondent,

vs.

C. J. MINOR, et al., Defendants; F. A. DICKSON, Appellant.

Pursuant to an order of Court duly made and entered in this cause April 28, A. D. 1916.

It is here and hereby determined and adjudged that the order of the Court below, herein appealed from, to-wit, of the District Court of the Seventh Judicial District, sitting within and for the County of Becker be and the same hereby is in all things affirmed.

And it is further determined and adjudged that the Respondent above named, do have and recover of said Appellant herein the sum and amount of Forty and 00/100 Dollars, ($40.00) costs and dis-

bursements in this cause in this Court, and that execution may be issued for the enforcement thereof.

Dated and signed May 16 A. D. 1916.

By the Court.

Attest:

I. A. CASWELL, *Clerk.*

*Statement for Judgment.*

Statutory Costs, $25.00. Printer, $14.50. Clerk, $—. Acknowledgments, $.50. Return, $—. Potage and Express, $—. Filing Mandate, $—. Total. $40.00.

67 STATE OF MINNESOTA,
*Supreme Court, ss:*

I, I. A. Caswell, Clerk of said Supreme Court, do hereby certify that the foregoing is a full and true copy of the Entry of Judgment in the cause therein entitled, as appears from the original remaining of record in my office; that I have carefully compared the within copy with said original and that the same is a correct transcript therefrom.

Witness my hand and seal of said Supreme Court at the Capitol, in the City of St. Paul, May 16 A. D. 1916.

[SEAL.] I. A. CASWELL, *Clerk.*

STATE OF MINNESOTA,
*Supreme Court:*

*Transcript of Judgment.*

Filed May 16, A. D. 1916. I. A. Caswell, Clerk.

(Endorsed:) Judgment Roll. Filed May 16, 1916. I. A. Caswell, Clerk.

68 STATE OF MINNESOTA,
*Supreme Court, ss:*

I, I. A. Caswell, Clerk of said court, do hereby certify that the foregoing is a true, full and complete transcript of the record and proceedings in the case of Luck Land Company, Respondent, vs. C. J. Minor, et al., Defendants, F. A. Dickson, Appellant, and also of the opinion of the court rendered therein together with the assignment of errors, as the same now appear on file in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said court at my office, in St. Paul, Minnesota, this 29th day of June, 1916.

[Seal of the Supreme Court, State of Minnesota.]

I. A. CASWELL,
*Clerk Supreme Court of Minnesota.*

69 STATE OF MINNESOTA,
*Supreme Court:*

LUCK LAND COMPANY, a Corporation, Plaintiff and Respondent,
vs.
C. J. MINOR, F. A. DICKSON and R. L. SMITH; Also All Other Persons Unknown Claiming Any Right, Title, Estate, Interest, or Lien in the Real Estate Described in the Complainant Herein, Defendants; and F. A. Dickson, Defendant and Appellant.

*Assignments of Error by Appellant F. A. Dickson, Presented and Filed with the Petition for Writ of Error from the United States Supreme Court to the Supreme Court of the State of Minnesota.*

The said Petitioner, F. A. Dickson, Plaintiff in Error for Writ of Error from the Supreme Court of the United States to the Supreme Court of the State of Minnesota, in the above entitled proceedings, by Frank Healy, and Charles C. Haupt and Clyde R. White, his attorneys, at the same time with the presenting and filing of his petition for writ of error in the above entitled proceedings, states that in the record, proceedings, decision and final judgment of the Supreme Court of the State of Minnesota, in the above entitled matter, there are manifest errors, in this,

I.

In said suit or proceedings in the Supreme Court of Minnesota there was drawn in question, as more fully shown in and by the record therein, the validity of the hereinafter designated and enumerated statutes of the United States, and the validity of the authorities exercised under the United States by the Secretary of the Interior, his subordinates, bureaus and departments, in and about
70 the issuing of the fee simple patent to the lands in said suit involved, and the decision and judgment of said Supreme Court of Minnesota were against the validity of such statutes and authorities and in favor of the validity of the statutes of the state of Minnesota, in this, that under and by virtue of such statutes and authorities of the United States the Indian to whom the lands involved in this suit were patented in fee, and through whom by subsequent mesne conveyances the plaintiff in error claims to have become the owner in fee of said lands, became and was, after the issuance of said fee simple patent, possessed of the absolute and unrestiricted right and privilege to sell, incumber and convey said lands, the constitution of the State of Minnesota and its statutes and laws defining the age at which one becomes an adult and making conveyances executed by minors void*a*ble at their option within a reasonable time after they attain their majority, to the contrary notwithstanding; and said decision and judgment by holding, as it did, that the aforesaid statutes and laws of the State of Minnesota, and not the aforesaid statutes of the United States

and the aforesaid authorities exercised under them, governed, controlled, and regulated the conveyance of said land by said Indian after he secured patent in fee thereto, and by holding that under said statutes of the state of Minnesota the conveyance of said lands made by said Indian to the predecessors in interest and the grantors of plaintiff in error were voidable and were avoided by the later conveyances which said Indian made after attaining his actual majority to the defendant in error and its predecessors in interest and grantors, and that therefore the defendant in error was the owner in fee of said lands, and that plaintiff in error had no right, title or estate in or to the same, denied to said statutes of and authorities exercised under the United States so much of their force and effect as plaintiff in error claims they possess in giving to said Indian the right to sell, incumber and convey said lands, and to that
71 extent denied the validity of such statutes and authorities, in respect of all of which said Supreme Court of the State of Minnesota erred.

II.

In said suit or proceeding in the Supreme Court of the State of Minnesota there was drawn in question the validity of those statutes of the state of Minnesota which define an adult to be a person who has attained the age of twenty-one years and which make deeds and conveyances executed by a minor voidable at his election within a reasonable time after he attains his majority; and such statutes were, as plaintiff in error contended and argued, in said suit and proceeding, repugnant to the statutes and laws of the United States, among others, the Act of Congress of February 8, 1887 (Statutes at Large 24-388) and the various acts amendatory thereof and supplementary thereto, and the Act of Congress of June 21, 1906 (34 Statutes at Large 325) as amended by the act of Congress of March 1, 1907 (34 Statutes at Large 1015), and the Act of Congress of May 8, 1906 (34 Statutes at Large 182) under and by virtue of all of which the Indian patentee of the lands involved in this suit had and possessed an absolute and unconditional right to sell, incumber and convey his said lands, the laws aforesaid of the State of Minnesota to the contrary notwithstanding; and in said suit or proceeding the Supreme Court of the State of Minnesota decided and held, in substance, that the conveyances by said Indian patentee were regulated and controlled by the said statutes of the State of Minnesota and not by the federal statutes aforesaid, and that under such statutes of the State of Minnesota the conveyances by the said Indian to the predecessors in interest and grantors of plaintiff in error were voidable at the option of said Indian patentee and had been by him avoided by his subsequent conveyances to the defendant in error and its predecessors in interest and grant-
72 ors; and in all of these respects, therefore, the aforesaid judgment and decision of the Supreme Court of the State of Minnesota was in favor of the validity of the said statutes of the State of Minnesota and against the validity of the said statutes of the United States, and was therefore erroneous.

III.

That said decision and judgment is, in substance and effect, against the rights, title and privileges of plaintiff in error in and to and about the lands involved in this action, which rights, title and privileges plaintiff in error claimed and asserted (1) under and by virtue of the Constitution of the United States, more particularly, (*a*) under Article VI. thereof which provides that "This constitution, and the laws of the United States which shall be made in pursuance thereof * * * shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding", and (*b*) Section 3 of Article IV. which provides that "The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States", and also (*c*) Section 8 of Article I. which provides that "The Congress shall have power to regulate commerce * * * with the Indian tribes", and (2) under the laws and statutes of the United States, more particularly, (*a*) the Act of Congress of February 8, 1887, chapter 119, (24 Statutes at Large 388) and the various acts amendatory thereof and supplementary thereto, (*b*) the Act of Congress of June 21, 1906, (34 Statutes at Large 325), as amended by the Act of Congress of March 1, 1907 (34 Statutes at Large 1015), (*c*) the Act of Congress of May 8, 1906 (34 Statutes at Large 182) and (*d*) all other laws and statutes of the United States relating to, governing or affecting the matters in controversy in this suit, and (3) also under the commissions held and exercised by the Secretary of the Interior and his subordinates, bureaus and departments,
73 under the United States, in and about the issuance of the fee simple patent to the Indian, as more fully shown by the records and proceedings in this case, which rights, title and privileges plaintiff in error, throughout the proceedings in the District and Supreme Courts of the State of Minnesota, specially set up and claimed under said constitution, statutes, commissions, and authorities; in this, that under and by virtue of the aforesaid constitution, statutes, commissions and authorities, the Indian to whom said lands were patented in fee and through whom plaintiff in error derived his rights, title and privileges in and to said lands, became and was, from and after the issuance of said fee simple patent to him, possessed of the absolute and unrestricted right to sell, incumber and convey said lands the constitution and laws of the State of Minnesota relating to conveyances of real estate by minors, to the contrary notwithstanding; in respect of all of which said Supreme Court of the State of Minnesota erred to the injury of the plaintiff in error.

IV.

The said Supreme Court of the State of Minnesota in said suit or proceeding erred in holding, deciding and adjudging that "The issuance of a patent does not prevent the courts of this state from

inquiring into the question of the Indian's age for the purpose of determining the validity of a conveyance by him," for the reason that under and by virtue of the constitution and statutes of the United States hereinbefore referred to and the commissions and authorities hereinbefore described, said Indian patentee while within the sole and exclusive jurisdiction of the United States, by the lawful exercise of the powers and authorities of federal officers thereunder became seized and possessed of the right to sell, incumber and convey his said lands, which right he possessed as a citizen of the United States beyond the power or authority of any state to remove, abridge or restrict; and the holding, decision and adjudica-
74 tion thus made, under the facts and circumstances of the case was against the title, rights and privilege of the plaintiff in error in and to and about the lands involved, all of which he specially set up and claimed under such constitution and statutes and under the commissions and authority exercised by the Secretary of the Interior and his subordinates under such constitution and statutes.

## V.

The said Supreme Court of the State of Minnesota in said proceedings erred under the facts and circumstances of this case in holding, adjudging and deciding that "'Under the federal statutes after a patent in fee is issued to an Indian, questions as to the validity of his subsequent transfers of the land are controlled by the laws of the state," for the reason that under the constitution and statutes of the United States and by virtue of their necessary force and effect the Indian in this case, while under the exclusive jurisdiction of the United States was given and granted the absolute and unconditional right to sell, encumber and convey the lands patented to him, and the necessary effect and consequence of such holding is to deprive plaintiff in error of his right, title and privileges in said lands which he specially set up and claimed in said suit under such constitution and statutes and the commissions and authorities exercised by the Secretary of the Interior and his subordinates, and said decision is therefore against such rights, title and privileges of the plaintiff in error.

## VI.

The Supreme Court of the State of Minnesota in said proceedings, under the facts and circumstances thereof, erred in holding, deciding and adjudging "It (the patent) settles it conclusively in so far as the right of the Indian to take and hold title is concerned, but the department has not attempted to adjudicate the capacity of the Indian to transfer his title," for the reason that under the constitu-
75 tion and statutes of the United States and the commissions and authorities exercised by the Secretary of the Interior and his subordinates thereunder, the determination of such department that the Indian was entitled to a fee simple patent was necessarily a determination and adjudication that all restrictions as to the sale, incumbrance or conveyance of such lands were removed and the

Indian patentee was thereafter entitled to sell, incumber and convey them; and hence the decision in question was against the right, interest and privilege of the plaintiff in error in and to the lands involved, which rights he specially set up and claimed in said action under and by virtue of the constitution, statutes, commissions and authorities aforesaid.

## VII.

The Supreme Court of the State of Minnesota in said proceedings, under the facts and circumstances of the case, erred in holding, deciding and adjudging "When the lands were conveyed to the Indian by a patent in fee, he became the absolute owner, and his title was unassailable. But in his further dealings with the property the laws of the state, not those of the federal government, controlled. The Act of Congress of February 8, 1887, (24 Stat. L. 388) and the Act of May 8, 1906, (34 Stat. L. 182) provided that when lands were conveyed to Indians by patent in fee, each and every allottee shall have the *subject* of and be subject to the laws of the state or territory in which he may reside. The Clapp Amendment of 1906 and 1907 (34 Statutes at Large 325, 1015) provided that 'all restrictions as to the sale, incumbrance and taxation of allotments within the White Earth Reservation heretofore or hereafter held by adult mixed blood Indians are hereby removed and the trust deeds heretofore or hereafter executed by the department for such allotments are hereby declared to pass title in fee simple.' The suggestion that by the Clapp Amendment Congress intended to remove any restrictions as to the sale of their lands by Indians except those that the
76 federal government had heretofore imposed is without merit. There can be no doubt, both under the language of the acts of February 8, 1887 and May 8, 1906, and under the decisions, that the validity of sales or transfers by the Indian is a matter to be determined by the state law,"—for the reason that under the constitution and statutes of the United States and the commissions and authorities exercised under them by the Secretary of the Interior and his subordinates in and about the issuance of fee simple patent to the Indian, the Indian in this case by the determination of such officials and by his patent to these lands became seized and possessed of the absolute and unconditional right to sell, convey and incumber them, and by such statutes became and was a citizen of the United States, entitled to all the rights, privileges and immunities of such citizens, "without in any manner impairing or otherwise affecting the right of any such Indian to tribal or other property"; and hence the decision aforesaid was against the right, interest and privilege of the plaintiff in error in and to the lands involved herein, which right he specially set up and claimed in said action under and by virtue of the constitution, statutes, commissions and authorities aforesaid.

Wherefore, the said plaintiff in error prays that the said judgment and decision of the Supreme Court of the State of Minnesota be reversed and annulled, and that said plaintiff in error may be restored to all things that he has lost by reason of such judgment, and that

judgment be rendered in favor of said plaintiff in error and against said defendant in error.

Dated June 16th, 1916.

FRANK HEALY,
519 *Metropolitan Life Bldg.,*
*Minneapolis, Minnesota;*
CHARLES C. HAUPT,
1015 *Merchant's Nat'l B'k Bldg.,*
*St. Paul, Minnesota;*
CLYDE R. WHITE,
509-514 *Minn. Loan & Trust Bldg.,*
*Minneapolis, Minnesota;*
*Attorneys for Plaintiff in Error.*

76½ (Endorsed:) Original. 19539. State of Minnesota, Supreme Court. Luck Land Company, a corporation, Plaintiff and Respondent, vs. C. J. Minor, F. A. Dickson and R. L. Smith; also all other persons claiming any right, title, estate, interest or lien in the real estate described in the complaint herein, Defendants; and F. A. Dickson, Defendant and Appellant. Assignments of Error by Appellant. Due personal service of the within Assignments of Error by Appellant upon me this 22 day of June, 1916, is hereby admitted. Marshall A. Spooner, Attorney for Plaintiff and Respondent. Charles C. Haupt, 1015 Merchants' Nat'l Bank Bldg., St. Paul, Minnesota, Clyde R. White, 509-14 Minn. Loan & Trust Bldg., Minneapolis, Minnesota, and Frank Healy, 519 Met. Life Bldg., Minneapolis, Minn., Attorneys for Plaintiff in Error. Filed Jun- 24, 1916. I. A. Caswell, Clerk.

77 STATE OF MINNESOTA,
*Supreme Court:*

LUCK LAND COMPANY, a Corporation, Plaintiff and Respondent,
vs.
C. J. MINOR, F. A. DICKSON and R. L. SMITH; Also all Other Persons Unknown Claiming any Right, Title, Estate, Interest or Lien in the Lands Described in the Complaint Herein, Defendants, and F. A. Dickson, Defendant and Appellant.

*Petition by the Appellant, F. A. Dickson, for Allowance of Writ of Error in Supreme Court of the United States to the Supreme Court of the State of Minnesota.*

To the Honorable Calvin L. Brown, Chief Justice of the Supreme Court, in the State of Minnesota:

The petition of F. A. Dickson, respectfully shows that in the above entitled proceedings on the 16th day of May 1916 a final judgment and decree was entered in the Supreme Court of the State of Minnesota, a tribunal having jurisdiction under the laws of the State of Minnesota to render final judgments in all proceedings of such nature and the highest Court or tribunal in said State in which a decision in said suit could be had; and in said proceedings said Luck

Land Company was plaintiff and respondent and your petitioner was defendant and appellant.

Your petitioner further shows that in May 1914, an action was commenced in the District Court of Becker County, Minnesota, by said Luck Land Company against your petitioner and C. J. Minor and R. L. Smith and also all other persons unknown claiming any right, title, estate, interest or lien in the lands described in the complaint therein and in the complaint in said action it was alleged in substance that said Luck Land Company was the owner in fee of
78 Lot seven (7) of Section two (2) and the Northwest quarter (N. W. ¼) of the Northeast quarter (N. E. ¼) of Section twenty-five (25), all in Township one hundred forty-two (142) North of Range thirty-nine (39) West and all in Becker County, Minnesota; that said lands were vacant and unoccupied and that defendant claimed an estate or interest in said lands adverse to the said plaintiff; and the plaintiff prayed that it might be adjudged to be the owner in fee of said premises and that defendants had no estate or interest therein. Each of the named defendants answered separately and admitted that plaintiff was a corporation and the lands described were vacant, but denied all the other allegations of the complaint. Thereafter issues were joined, the cause placed upon the Calendar and on October 17th, 1914, the same was tried by the Court without a Jury. Upon the trial, the defendant, C. J. Minor, failed to appear and was defaulted. Prior to the trial, defendant R. L. Smith quit-claimed all of his interest, estate in the lands to your petitioner and this fact your petitioner by leave of the trial court set up by Supplemental Answer on the trial. The defendant R. L. Smith did not appear upon the trial and was also defaulted. The trial court made its findings of fact and conclusions of law and ordered judgment for the plaintiff accordingly.

From the evidence and findings of fact in said case, it appeared, among other things, that the lands above described were a part of the White Earth Indian Reservation in the State of Minnesota; that Me-Gis-Way-Waish-Kung or George Wah-We-Yea-Cumig, hereinafter called the Indian, was a mixed blood Chippewa Indian of the White Earth Indian Reservation; that on September 13th, 1907, said lands were duly allotted to the Indian under and pursuant to the provisions of the Act of Congress of February 8th, 1887, Chapter 119 (24 Stat. L. 388) and subsequent amendments thereof and supplements thereto; that on February 6th, 1908, a trust patent to said lands was duly issued pursuant to the above Act and the then existing laws relating to and governing the subject matter thereof, to the Indian
79 by the general land office of the United States upon the recommendation and approval of the Secretary of the Interior and the acting commissioner of the office of Indian affairs, by the terms of which the United States agreed to hold said lands in trust for the Indian and his heirs for a period of twenty-five (25) years; that in April 1908, the Indian made due application under and pursuant to the provisions of the Act of Congress of June 21, 1906 (34 Stat. L. 325) as amended by the Act of Congress of March 1st, 1907 (34 Stat. L. 1015), the so-called Clapp Amendment, to the Superintendent and Special Disbursing Agent at White Earth, Min-

nesota, for a fee simple patent to said lands, and accompanied his application with his own affidavit and those of five other persons, reciting in substance that he was then an adult mixed blood Chippewa Indian of White Earth Reservation; that this application was duly forwarded by said agent to the Secretary of the Interior and such proceedings were thereafter had and taken that issuance of a fee simple patent was recommended and on August 6th, 1908 a fee simple patent to said lands was duly issued by the general land office of the United States to the Indian.

At the trial, defendant introduced no evidence of the Indian's age and the trial court found against petitioner's objection as a fact that the Indian became of age in April or May 1910. Prior to May 1910, the Indian made two conveyances of these lands by Warranty Deeds, one to A. C. Knudson and the other to Louis C. Carpenter. By subsequent mesne conveyances, the interests and estates of Knudson and Carpenter were conveyed to and lodged in your petitioner. Subsequently to May 1910, the Indian made two other conveyances of these lands by Warranty Deeds, the rights under which, if any, were subsequently vested by mesne conveyances in the plaintiff, Luck Land Company, and upon the trial, plaintiff introduced the fee simple patent in evidence and relied upon it. Upon the trial of said action in the District Court, your petitioner objected to the introduction of evidence tending to prove the minority of the Indian at the time of the two first named conveyances by him, and at the close of all the evidence moved for judgment in his own behalf, which objection and motions were made upon the grounds and for the reasons hereinafter set forth, why the age of said Indian was not in issue in said action.

After the filing of findings of fact and conclusions of law by the trial court, your petitioner duly moved the court for an order amending its conclusions of law and its order for judgment or if that should be denied, then for a new trial upon the grounds and for the reasons more fully set forth and shown in the record herein, and in this petition hereinafter, but among others, that the finding of fact that the Indian was born in April or May 1889 was a finding upon a fact not in issue in the case, because under the Constitution and Laws of the United States and the commissions and authorities exercised by the officers of the United States under said Statutes and Constitution, the patent issued to said Indian was conclusive upon that question. Petitioner's motion was denied in all respects and from the order denying the same, petitioner duly appealed to the Supreme Court of the State of Minnesota, which on the date aforesaid affirmed the order of the trial court. In said Supreme Court the sole and only legal question argued and submitted was the right of plaintiff under the Constitution and Statutes of the United States to raise the question of the Indian's age or minority in said action, and this question was there argued and contested in all respects and upon all grounds shown in this petition and in the Assignment of Errors filed herewith.

Your petitioner further shows that by the Act of February 8th, 1887, supra, it was provided, among other things, that "if any conveyances shall be made of the lands set apart and allotted as herein

provided, or any contract made touching the same, before the expiration of the time (25 years) above mentioned, such conveyance shall be absolutely null and void"; and by the Act of June 21, 1906, supra, it was provided, that "all restrictions as to the sale, incumbrance or taxation for allotments within the White Earth Reservation in the State of Minnesota, heretofore or hereafter held by adult
81 mixed blood Indians, are hereby removed, and the trust deeds heretofore or hereafter executed by the department for such allotments are hereby declared to pass the title in fee simple, or such mixed bloods upon application shall be entitled to receive patent in fee simple for such allotments"; and that by the Act of May 8th, 1906, supra, it was provided, among other things, that "until the issuance of fee simple patents, all allottees to whom trust patents shall hereafter be issued shall be subject to the exclusive jurisdiction of the United States." (34 Stat. L. 182).

Your petitioner further shows that throughout the trial of said cause in the said District Court and in the said Supreme Court of Minnesota, he made the following claims and contentions, among others,—that by virtue of the Constitution of the United States and its Statutes, and in particular, the hereinbefore referred to Statutes of the United States, the Indian was within the sole and exclusive jurisdiction of the United States until fee simple patent had been issued to him; that during that time there were and could be no restrictions upon his right to sell or convey or encumber said land, except such as the Government of the United States imposed; that in proceedings for the issuance of fee simple patent to him, the proper officers, under the so-called Clapp Amendment and the other Statutes relating to this subject, necessarily found and determined that the Indian was at the date of the issuance of such patent an adult mixed blood Indian Allottee of the White Earth Reservation in the State of Minnesota; that by virtue of that patent and the laws and Constitution of the United States, the Indian was necessarily vested with both the fee simple title to said lands and the absolute and unconditioned right to sell, encumber and convey the same; that this right was not contingent upon nor subject to the laws of the State of Minnesota in regard to conveyances by minors, and that the State of Minnesota was without power or authority to take away, alter, modify or condition the right of sale, encumbrance and conveyance thus conferred upon the Indian by the laws and Constitution of the United States that under the Constitution and laws of the United
82 States, said fee simple patent was a quasi-judicial determination of the Indian's age as well as a muniment of title and was conclusive and unimpeachable evidence upon that question, and was not subject to collateral attack, and that therefore, the question of the Indian's age was not in issue in said action; that, therefore, said fee simple patent was conclusive evidence that the Indian at the date of its issuance to him was an adult; that by reason of such Constitution and the laws of the United States, your petitioner in purchasing said land had the legal right and privilege to rely upon said patent as a conclusive and final determination that the Indian was an adult at the date of the issuance and was privileged not to inquire by

parol as to said Indian's age; that by reason of the force and effect of said Constitution and Statutes, the title to said lands passed from the Indian to his immediate grantee and from them by mesne conveyances to your petitioner; that the conveyances subsequent to May 1910 did not transmit any title or estate to the grantee therein named, for the reason that the Indian then had nothing to convey, and that the position taken by the plaintiff and by it contended for, was in contravention of numerous articles of the Constitution of the United States, among others, Article VI, which provides that "This constitution, and the laws of the United States which shall be made in pursuance thereof, * * * shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding". And also Section 3 of Article 4 of said Constitution providing that "the Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States"; and also Section 8 of Article I, which provides that "The Congress shall have power to regulate commerce * * * with the Indian tribes."

And finally your petitioner shows that in said suit or proceeding in the Supreme Court of Minnesota, there was drawn in question the validity of the aforesaid Statutes of the United States,
83 and the validity of the authorities exercised under the United States by the said Secretary of the Interior and his subordinates, and the decision of said Supreme Court of the State of Minnesota was against the validity of such Statute and authorities in this, that under and by virtue of such Statute and authority, the Indian Allottee in this case became and was seized and possessed of the right, title and privilege to sell, encumber and convey the lands involved in this suit, the laws and Constitution of the State of Minnesota to the contrary notwithstanding, and lawfully conveyed said lands to the grantors of the plaintiff in error, and the decision and determination of the Secretary of the Interior and his subordinates, including the land department of the United States was a quasi-judicial determination, that said Indian Allottee was not only entitled to a patent to such lands, but that he was lawfully entitled to sell, convey, encumber the same; that the decision of said Supreme Court of the United States restricts and confines the scope and effect of such Statutes to narrower limits than was the intention and purpose of Congress and pro tanto denies their validity, and it also restricts, confines and narrows the scope and effect of the determination of the Secretary of the Interior and his subordinates made pursuant to such Statute and to that extent denies to such determination the full validity, force and effect which Congress intended it should have.

And finally, your petitioner shows that in said suit or proceeding in the Supreme Court of the State of Minnesota, there was drawn in question the validity of that Statutes of the State of Minnesota which defines an adult to be a person who has attained the age of twenty-one years, and which make deeds and conveyances executed by a minor voidable at his election, within reasonable time after he attains

his majority; and such Statutes were, as plaintiff in error contended and argues, in said suit and proceeding, repugnant to the Statutes and laws of the United States, among others, the Act of Congress of February 8, 1887 (24 Stat. L. 388), and various acts amendatory thereof and supplementary thereto, and the Act of Congress of June 21, 1906, (34 Stat. L. 325) as amended by the Act of Congress of March 1st, 1907, (34 Stat. L. 1015) and the Act of Congress of May 8, 1906, (34 Stat. L. 182) under any by virtue of all of which the Indian patentee of the lands involved in this suit had and possessed an absolute and unconditional right to sell, encumber and convey his said lands, the laws aforesaid of the State of Minnesota to the contrary notwithstanding; and in said suit or proceeding, the Supreme Court of the State of Minnesota decided and held in substance that the conveyance by said Indian patentee was regulated and controlled by the said Statutes of the State of Minnesota and not by the Federal Statutes aforesaid, and that under such Statutes of the State of Minnesota, the conveyances by the said Indian to the predecessors in interest and grantors of the plaintiff in error were voidable at the option of said Indian patentee and had been by him avoided by his subsequent conveyance to the defendant in error and its predecessors in interest and grantors; and in all of these respects, therefore, the aforesaid judgment and decision of the Supreme Court of the State of Minnesota was in favor of the validity of said Statutes of the State of Minnesota and against the validity of said Statutes of the United States, and was, therefore, erroneous.

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Wherefore, your petitioner prays that a Writ of Error be allowed, and that a transcript of record, proceedings and papers upon which said decree was rendered, duly authenticated, be ordered sent to the Supreme Court of the United States at Washington, D. C. under the rules of such Court in such cases made and provided, and that the same may be by this Honorable Court inspected and corrected in accordance with the law and justice.

FRANK HEALY,
519 *Metropolitan Life Bldg.*,
*Minneapolis, Minnesota.*
CHARLES C. HAUPT,
1015 *Merchants Nat'l Bank Bldg.*,
*St. Paul, Minnesota.*
CLYDE R. WHITE,
509-14 *Minn. Loan & Trust Bldg.*,
*Minneapolis, Minnesota.*
*Attorneys for the Petitioner.*

85 STATE OF MINNESOTA,
*County of Hennepin, ss:*

F. A. Dickson, being duly sworn, says that he is the foregoing Petitioner; that the same is true of his own knowledge except as to matters therein stated on information and belief, and as to such matters he believes the same to be true.

F. A. DICKSON.

Subscribed and sworn to before me this 14th day of June, A. D. 1916.

[Notarial seal Hennepin County, Minn.]

J. A. SEBESTA,
*Notary Public, Hennepin County, Minnesota.*

My commission expires Feb. 27, 1921.

86 STATE OF MINNESOTA,
*Supreme Court:*

LUCK LAND COMPANY, a Corporation, Plaintiff and Respondent,
vs.
C. J. MINOR, F. A. DICKSON and R. L. SMITH; Also All Other Persons Unknown Claiming Any Right, Title, Estate, Interest or Lien in the Lands Described in the Complaint Herein, Defendant; and F. A. Dickson, Defendant and Appellant.

*Order of Allowance of Writ of Error.*

On this 16th day of June, A. D. 1916, the application of F. A. Dickson, defendant and appellant in the above entitled action came on to be heard, said F. A. Dickson being represented by counsel, and it appearing to the Court from the petition filed herein and from the files and records in this case, that his application should be granted, and that a transcript of the record, proceedings and papers upon which the judgment of the Court was rendered, properly certified, should be sent to the Supreme Court of the United States, as prayed, in order that such proceeding may be had as may be just,

Now, therefore, it is ordered that the Writ of Error be allowed, and, a bond having been duly furnished by the petitioner within sixty (60) days after rendition of said judgment, that said bond shall operate as a supersedeas, and the Clerk shall stay the mandate to the District Court of the Seventh Judicial District in and for the County of Becker and State of Minnesota, until the further order of this Court; and that a true copy of the record, assignment of errors and all proceedings in the case shall be transmitted to the Supreme Court of the United States, duly certified according to law, in order that said Court may inspect the same and take such action thereon as it deems proper according to law.

CALVIN L. BROWN,
*Chief Justice Supreme Court of Minnesota.*

86½ [Endorsed:] 19539. Original. State of Minnesota, Supreme Court. Luck Land Company, a corporation, Plaintiff and Respondent vs. C. J. Minor, F. A. Dickson and R. L. Smith: also all other persons unknown claiming any rights, title, estate, interest or lien in the lands described in the complaint herein, Defendants and F. A. Dickson, Defendant and Appellant. Petition for Writ of Error and order allowing Writ and granting supersedeas.

Due personal service of the within Petition for Writ of Error and Order allowing Writ and granting supersedeas upon me this 22 day of June, 1916, is hereby admitted. Marshall A. Spooner, Attorney for Plaintiff and Respondent. Charles C. Haupt, 1015 Merchants Nat'l Bank Bldg., St. Paul Minn.; Frank Healy, 519 Met. Life Bldg., Minneapolis, Minnesota, and Clyde R. White, 509-14 Minn. Loan & Trust Bldg., Minneapolis, Minnesota, Attorneys for Plaintiff in Error. Filed Jun 24, 1916. I. A. Caswell, Clerk.

87 State of Minnesota, Supreme Court.

LUCK LAND COMPANY, A Corporation, Plaintiff and Respondent,

vs.

C. J. MINOR, F. A. DICKSON, and R. L. SMITH; also all other persons unknown claiming any right, title, estate, interest or lien in the real estate described in the complaint herein, and F. A. Dickson, Defendant and Appellant.

*Bond on Writ of Error.*

Know All Men By These Presents, That we, F. A. Dickson as principal, and the United States Fidelity and Guaranty Company, a corporation of Baltimore, Maryland, created, organized and existing under and by virtue of the laws of the State of Maryland, as surety, are firmly bound unto the Luck Land Company, a Minnesota corporation, its successors, representatives and assigns in the full and just sum of Five Hundred Dollars ($500.00), to be paid unto the said Luck Land Company, its successors, representatives or assigns in good and lawful money of the United States of America, to which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, by these presents.

Sealed with our seals and dated this 14th day of June, A. D. 1916.

Whereas, lately, in the Supreme Court of the State of Minnesota, in a suit pending in said court between the Luck Land Company, a corporation, Plaintiff and Respondent, and C. J. Minor, F. A. Dickson and R. L. Smith, and also all other persons unknown claiming any right, title, estate, interest or lien in the real estate described in the complaint therein, Defendants, and F. A. Dickson, Defendant and Appellant, judgment was rendered against said Appellant F. A. Dickson, and the said Appellant has obtained a Writ of Error and filed a copy thereof in the office of the Clerk of said court, to reverse the judgment in the aforesaid court, and a Citation directed to said Luck Land Company, citing and admonishing it to be and appear at the Supreme Court of the United States at Washington, in the District of Columbia, within thirty days after the date thereof.

Now, the condition of the above obligation is such that if the said F. A. Dickson shall prosecute said Writ of Error to effect and ensure all damages and costs if it shall fail to make good its plea, then

the above obligation to be void, otherwise to remain in full force and virtue.

(Signed) F. A. DICKSON [SEAL.]
UNITED STATES FIDELITY
AND GUARANTY CO.,
By WIRT WILSON,
*Its Attorney in Fact, and*
GEORGE E. MURPHY,
*Its Att'y in Fact.*

In the Presence of:
J. A. SEBESTA,
CLARENCE V. CARLSON,
As to F. A. Dickson.
L. O'DONNELL,
H. J. WENTZEL.

88 STATE OF MINNESOTA,
*County of Hennepin, ss:*

On this 14th day of June, 1916, before me, a Notary Public within and for said County, personally appeared F. A. Dickson, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

[NOTARIAL SEAL.] (Signed) J. A. SEBESTA,
*Notary Public, Hennepin County, Minnesota.*

My commission expires Feb. 27, 1921.

STATE OF MINNESOTA,
*County of Hennepin, ss:*

On this 14th day of June, A. D. 1916, before me a Notary Public within and for said County and State, personally appeared Wirt Wilson and George E. Murphy to me personally known, who being by me duly sworn upon oath did say that they are the agents and attorneys in fact of and for the United States Fidelity and Guaranty Company, a corporation of Baltimore, Maryland, created, organized, and existing under and by virtue of the laws of the State of Maryland; that the corporate seal affixed to the foregoing within instrument is the seal of said company; that the said seal was affixed and the said instrument was executed by authority of its Board of Directors; and the said Wirt Wilson and George E. Murphy did acknowledge that they executed the said instrument as the free act and deed of said company.

[NOTARIAL SEAL.] (Signed) H. J. WENTZEL,
*Notary Public, Hennepin County, Minnesota.*

My commission expires, Sept. 16th, 1917.

The foregoing bond is hereby approved.

(Signed) CALVIN L. BROWN,
*Chief Justice Supreme Court, State of Minnesota.*

(Endorsed:) Filed Jun. 21, 1916. I. A. Caswell, Clerk.

89 Supreme Court of the United States.

F. A. DICKSON, Plaintiff in Error and C. J. MINOR and R. L. SMITH, also all other persons claiming any right, title, estate, interest or lien in the real estate described in the complaint, Defendants,

vs.

LUCK LAND COMPANY, a Corporation, Defendant in Error.

*Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable Judge of the Supreme Court of the State of Minnesota, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the Supreme Court of the State of Minnesota, before you or some of you, being the highest court of law or equity in the said State in which a decision could be had in the said suit between the Luck Land Company, a corporation, Plaintiff and Respondent, and C. J. Minor, F. A. Dickson and R. L. Smith, and also all other persons unknown claiming any right, title, estate, interest or lien in the real estate described in the complaint therein, Defendants, and F. A. Dickson, Defendant and Appellant, wherein was drawn in question the validity of a statute of said State, on the ground of its being repugnant to the Constitution of the United States, and the decision was in favor of such validity; and wherein was drawn in question the construction and effect of certain statutes of the United States, and the decision was against the title, right, privilege and immunity specially set up and claimed under said Statutes, a manifest error hath happened to the great
90 damage of the said F. A. Dickson, as by his complaint appears, we, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the party aforesaid, in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Justices of the Supreme Court of the United States, at the Capitol in the City of Washington, together with this Writ, so that you have the same at the said place, before the Justices aforesaid, within thirty (30) days from the date hereof, that the record and proceedings aforesaid being inspected, the said Justices of the Supreme Court may cause further to be done therein, to cor-

rect that error, what of right and according to the law and custom of the United States ought to be done.

Witness The Honorable Edward Douglass White, Chief Justice of the United States, this 20th day of June, in the year of our Lord one thousand nine hundred sixteen.

[Seal of the United States District Court for the District of Minnesota.]

CHARLES L. SPENCER,
*Clerk of the District Court of the United States for the District of Minnesota.*
By MARGARET L. MULLANE, *Deputy.*

The above Writ is allowed this 16th day of June, 1916.
CALVIN L. BROWN,
*Chief Justice of the Supreme Court of Minnesota.*

90½ [Endorsed:] Original. 19539. United States Supreme Court. F. A. Dickson, Plaintiff in Error and C. J. Minor, F. A. Dickson and R. L. Smith, also all other persons claiming any right, title, estate, interest or lien in the real estate described in the Complaint herein, Defendants, vs. Luck Land Company, a corporation, Defendant in Error. Writ of Error. Due personal service of the within Writ of Error is hereby admitted this 22nd day of June, 1916. Marshall A. Spooner, Attorney for Defendant in Error. Charles C. Haupt, 1015 Merchants Natl. Bank Bldg., St. Paul, Minnesota, Frank Healy, 519 Met. Life Bldg., Minneapolis, Minn., and Clyde R. White, 509-14 Minn. Loan & Trust Bldg., Minneapolis, Minnesota, Attorneys for Plaintiff in Error. Filed Jun. 24, 1916. I. A. Caswell, Clerk.

91 STATE OF MINNESOTA,
*Supreme Court, ss:*

I, I. A. Caswell, clerk of the said court, do hereby certify that there was lodged with me as such clerk on June 24, 1916, in the matter of Luck Land Company, Respondent, vs. C. J. Minor, et al., Defendants, F. A. Dickson, Appellant.

1. The original bond of which a copy is herein set forth;
2. Copies of the writ of error, as herein set forth,—one for each defendant and one to file in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said court at my office, in St. Paul, Minnesota, this 29th day of June, 1916.

[Seal of the Supreme Court, State of Minnesota.]

I. A. CASWELL,
*Clerk Supreme Court of Minnesota.*

92 Supreme Court of the United States.

F. A. DICKSON, Plaintiff in Error, and C. J. MINOR, F. A. DICKSON and R. L. Smith, also all other persons unknown claiming any right, title, estate, interest or lien in the real estate described in the complaint herein, Defendants,

vs.

LUCK LAND COMPANY, a Corporation, Defendant in Error.

*Citation.*

United States of America to Luck Land Company, a Corporation, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, in the District of Columbia, within thirty (30) days after the date hereof, pursuant to Writ of Error filed in the office of the Clerk of the Supreme Court of the State of Minnesota, wherein F. A. Dickson is plaintiff in error and the Luck Land Company, a corporation is defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in said Writ mentioned should not be corrected and speedy justice should not be done in that behalf.

Witness, The Honorable Calvin L. Brown, Chief Justice of the Supreme Court of the State of Minnesota, this 16th day of June, A. D. 1916.

CALVIN L. BROWN,
*Chief Justice Supreme Court of Minnesota.*

92½ [Endorsed:] Original. 19539. Supreme Court of the United States. F. A. Dickson, Plaintiff in Error and C. J. Minor, F. A. Dickson, and R. L. Smith, also all other persons unknown claiming any right, title, estate, interest or lien in the real estate described in the complaint herein, Defendants, vs. Luck Land Company, a corporation, Defendant in Error. Citation. Due personal service of the within Citation and receipt of copy thereof this 22 day of June, A. D. 1916, is hereby admitted. Marshall A. Spooner, Attorney for Defendant in Error. Frank Healy, 509 Metropolitan Life Bldg., Minneapolis, Minn., and Charles C. Haupt, 1015 Merchants Natl. Bank Bldg., St. Paul, Minnesota, and Clyde R. White, 509-14 Minn. Loan & Trust Bldg., Minneapolis, Minnesota, Attorneys for Plaintiff in Error. Filed Jun. 24, 1916. I. A. Caswell, Clerk.

93 UNITED STATES OF AMERICA,
*Supreme Court of Minnesota, ss:*

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within entitled case, with all things concerning the same.

# In the Supreme Court of the United States

OCTOBER TERM, 1916.

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No. 600.

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F. A. DICKSON,
*Plaintiff in Error,*

AND

C. J. MINOR, F. A. DICKSON AND R. L. SMITH; ALSO ALL OTHER PERSONS UNKNOWN CLAIMING ANY RIGHT, TITLE, ESTATE, INTEREST OR LIEN IN THE REAL ESTATE DESCRIBED IN THE COMPLAINT HEREIN, *Defendants,*

*vs.*

LUCK LAND COMPANY, A CORPORATION,
*Defendant in Error.*

---

## Reply Brief of Defendant in Error on Motion to Dismiss or Affirm.

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MARSHALL A. SPOONER,
*Attorney for Defendant in Error.*

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Review Publishing Co., 513 4th Ave. So., Minneapolis

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### Cases Cited.

# In the Supreme Court of the United States

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No. 600.

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*vs.*

LUCK LAND COMPANY, A CORPORATION,

*Defendant in Error.*

---

## Reply Brief of Defendant in Error on Motion to Dismiss or Affirm.

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Although the points on which plaintiff in error relies in resisting our Motion to Dismiss or Affirm, have been broadly anticipated and met in our original brief, we specifically reply to the suggestions made by plaintiff in error in his brief.

The nature of the issues are such that our briefs will serve to present our printed argument on the merits,

should the Court pass upon the merits at the same time our motion is considered.

### Nature of Issues Presented.

At page 2 of the opposing brief it is said: "We do not understand that defendant in error questions the validity or regularity of the proceedings of the government up to this point" (the point at which a *trust* patent was issued to the Indian).

We do not question the *validity* of the proceedings of the government at any point! We merely question the *effect* of those proceedings asserted by plaintiff in error. We admit that those proceedings vested title in the Indian beyond all question of *validity* on that point. But we deny that issuance of the fee simple patent to the Indian had the *effect* of foreclosing inquiry in the state courts as to the Indian's adulthood, as affecting the validity of a conveyance made by him *after* he had become so vested with title.

Plaintiff in error's brief (p. 4) admits that we should prevail if we are right in the last stated proposition.

Certainly, the fact asserted by plaintiff in error that the land involved is vacant and unoccupied cannot affect our right to dismissal of the writ of error or affirmance of the judgment below, if no Federal Question is presented, or if, any such question being presented, plaintiff in error's claims under it are manifestly frivolous. Nor is plaintiff in error's assumption that a delay in disposing of the writ of error cannot "harm" defendant in error either fair or reasonable. It is manifest that so long as the litigation remains unsettled, our

right to enjoy full ownership of the property in question is suspended.

Nor is plaintiff in error entitled to take anything by the suggestion at page 26 of his brief: "The Clapp Amendment has never been construed in the particulars in which a construction here is sought." That is best answered by the language of this Court in *Blythe v. Hinckley*, 180 U. S. 333:

> "Plaintiff urges that never before has the question been directly passed upon by this court. If he means that it has never heretofore been asserted, that in the absence of any treaty whatever upon the subject, the state has no right to pass a law in regard to the inheritance of property within its border by an alien coowner may be correct. *The absence of such a claim is not so extraordinary as the claim itself.*"

Plaintiff in error's sole reliance in this Court, as well as in the court below, is the proposition that issuance of the patent to the Indian in this case on the Secretary of Interior's finding of his adulthood is conclusive, not only as to the *vesting* of valid title in the Indian, but also as to his adulthood for the purpose of determining the validity of the conveyances *from* him, here involved. Plaintiff in error candidly admits: "If the question of the Indian's age was an open one in the case, then *plaintiff in error's two deeds were given prior to the date at which by the evidence the Indian became of age, and were avoided under the Minnesota law by his subsequent deeds to the grantors of defendant in error*" (Plaintiff in Error's Brief, p. 4).

Plaintiff in error's position in this regard is formally stated in a proposition at page 5 of his brief, that the Clapp Amendment conferred upon "adult mixed blood

Indian allottees * * * the absolute right to sell * * * the lands the laws of * * * Minnesota making conveyances * * * by minors voidable * * * to the contrary notwithstanding; and the fee simple patents so issued are final and conclusive evidence of the right of such Indian patentee to sell, incumber and alienate such lands."

EFFECT OF CLAPP AMENDMENT.

We admit that the Clapp Amendment removed all *federal restrictions* on the sale of lands of *adult* mixed blood Indian allottees, for the language of the Amendment is plain on that point.

And if there is reason or logic in the proposition that the laws of the state making conveyances by *minors* voidable cannot affect the validity of the provision of the Clapp Amendment conferring upon "*adult*" mixed blood Indians the right to convey, free of federal restrictions, we agree that it is sound.

So, it becomes clear that plaintiff in error frames the main issue upon the assertion that a fee simple patent issued under the Clapp Amendment is conclusive evidence of the patentee's right to convey. We agree that the patent is conclusive evidence that title has been vested in him, and that the federal government has removed all prior "restrictions" against alienation. The vital controversy arises on the point whether the patent is conclusive as to the Indian's adulthood for purposes other than the *vesting of title in him*. We assert that it is not—that the patent no more conclusively fixes his adult character for the purpose of the validity of

conveyances purporting to *divest* title than it would be conclusive as to his right to vote, or perform any other act requiring adulthood under the laws of the state to which Congress has expressly made him subject.

The Clapp Amendment does not by express or implied provision make a patent conclusive evidence of an Indian's adulthood, so far as the validity of conveyances from him are concerned. It merely removes federal restrictions and provides that the Indian's title shall be one in fee simple. On the other hand, Congress *did* declare, by the Act of May 8, 1906, in unambiguous terms, that this Indian became subject to the laws of Minnesota on issuance of the patent to him. And it is admitted that those laws invalidated the deeds under which plaintiff in error claims, except as controlled by the Secretary of Interior's finding of adulthood.

Under these circumstances, we respectfully submit that the validity of the conflicting conveyances involved in this controversy depends, not upon any federal statute or federal authority, but rather upon the Minnesota laws governing the validity of conveyances of private land.

A Federal Question comes into this case only so far as plaintiff in error makes the palpably unsound contention that Congress has manifested a purpose to make the Secretary's finding of adulthood conclusive beyond the point where title has vested in the Indian. And this contention is made in the face of express provisions showing a contrary legislative intention, as manifested in limiting the removal of restrictions to *adult* Indians, and in making them at the same time subject to state law.

Not only does plaintiff in error fail to point out any act of Congress sustaining his position, but he fails to cite a single case that directly or by analogy extends the doctrine concerning the conclusiveness of patents to this controversy.

## When State Jurisdiction Attached.

At page 21 of his brief, plaintiff in error says:

> "The State cannot accept the determination of the Indian's age by the federal government for the purpose of making the Indian subject to state law, both civil and criminal, and deny the correctness of that determination when the Indian seeks to convey his land. * * * Unless the Indian is an adult, he is not subject to that law, and he can only become subject to that law by the determination or adjudication of his adulthood by federal authority; hence, if he cannot become an adult by federal adjudication, he cannot become subject to the state law."

The weakness of this argument is manifest. The Acts of Congress did not make *adulthood* the condition on which an Indian should become subject to the state laws. As shown by Section 6 of the Act of 1887, amended by Act of May 8, 1906 (34 Stat. L. 182), and quoted by plaintiff in error at page 7 of his brief, Congress provided that *"when the lands have been conveyed to the Indian by patent in fee, * * * then* each and every allottee shall have the benefit of and become subject to the laws, both civil and criminal, of the state," etc.

By virtue of this enactment, the Indian in this case became subject to *all* the state laws the moment patent in fee issued to him, including those governing the

transfer of property, as well as those disconnected with his property rights.

We respectfully assert that the fundamental error into which plaintiff in error has fallen throughout the course of this case is through failure to give to the federal statutes the interpretation which they plainly require—through failure to give proper force, on one hand, to the clause of the Clapp Amendment which declares removal of "all RESTRICTIONS as to the sale, encumbrance or taxation of allotments," etc., and, on the other hand, to the equally effective statute under which "when the lands have been conveyed to the Indian by patent in fee, * * * then each and every allottee shall have the benefit of and be subject to the laws, both civil and criminal, of the state."

## What "Restrictions" were Removed?

*"Restrictions"* is the word which should be emphasized and not the word "all," so far as this controversy is concerned. What "restrictions" were removed by Congress under the Clapp Amendment? Plainly, not those imposed by the state laws, to which Congress expressly made the Indian patentees subject, but rather those restrictions which Congress had previously imposed in its guadianship.

Restrictions as to encumbrance of the land were removed, so far as previous federal statutes were concerned, but that did not mean that the Indian could give a valid mortgage, without complying with the laws of the state governing execution of mortgages. Restrictions on taxation were removed, but that did not

permit taxation, except in accordance with the state laws the benefit of which were guaranteed by the Act of May 8, 1906. Restrictions as to the sale of the lands were removed, but manifestly not to the extent of making a sale valid should the Indian happen to be insane, or otherwise actually or constructively incapable of making a valid conveyance under the state laws to which Congress expressly made him subject.

PLAINTIFF IN ERROR'S AUTHORITIES DISTINGUISHED.

If the holding in *United States v. Rickert,* 188 U. S. 432 (cited at page 6 of plaintiff in error's brief) that, *during the trust period,* allotted lands were not subject to taxation, is pertinent here at all it supports the plain language of the latter enacted Clapp Amendment and the Act of May 8, 1906, under which the lands *did* become subject to state control when the trust period terminated.

Admitting, as we do, the soundness of plaintiff in error's statement (p. 6) that the previous restraint on alienation was, as declared in *Beck v. Flournoy Live Stock, etc., Co.,* 65 Fed. 30; 69 Fed. 886, intended by Congress as a protection of the Indian against the superior intelligence and the greed of the white man, is it not equally clear that Congress intended to afford further protection against the superior intelligence and the greed of the white man when it was enacted that the moment federal control was released the Indian should become subject to and have the benefits of the state laws?

The gist of Judge Page Morris' decision in *United States v. Park Land Co.*, 188 Fed. 383 (cited at pages 7-9 of plaintiff in error's brief), is contained in the following statement of his opinion:

> "In other words, it seems to me that by the Clapp Amendment Congress meant to say that it is conclusively presumed that an ADULT mixed blood is competent to go ahead and manage his own affairs, and therefore removed from him all restrictions on the sale of any allotment."

There is nothing in this decision on the point as to the conclusiveness of the Land Department's finding that a particular Indian was of age. In fact, the whole opinion is thoroughly consistent with our claim that Congress was vitally concerned in withholding the power of alienation until an Indian should become twenty-one years old. Neither the Clapp Amendment nor Judge Morris' decision declares that an Indian 19 years old is "competent to go ahead and manage his own affairs" because the Land Department has erroneously found that the Indian is of age.

*Elk v. Wilkins*, 112 U. S. 94; *United States v. Kagama*, 118 U. S. 375; and *United States v. Rickert*, 188 U. S. 432 (cited at page 10 of the opposing brief), all bear on the irrelevant point that Indians are wards of the federal government, until Congress releases the guardianship.

Not one of the authorities cited at pages 10-12 of plaintiff in error's brief, on the admitted proposition that a patent issued by the United States is conclusive as to the validity of the *title conveyed by the patent*, contains a word which supports plaintiff in error's claim that the patent here is conclusive as to the valid-

ity of a conveyance *from the patentee*. We do not attack the Indian's *title*, but merely claim under his own right to avoid a *transfer* of that title, invalid under the state laws to which Congress made him subject concurrently with the issuance of the patent.

We, of course, concede that, as decided in *United States v. Holliday*, 3 Wall. 407 (cited at page 15 of plaintiff in error's brief), Congress was the sole judge as to when this Indian should be competent to manage his own affairs. This exclusive judgment was, however, exercised by declaring him to be competent when he should become twenty-one. Congress was concerned more on the point of his actual adulthood than with the Secretary of Interior's finding on *ex parte* affidavits as to when the Indian became of age. The Secretary's discretion was limited by the express terms of the Clapp Amendment to the case of *full* blood Indians. As to mixed bloods, Congress declared when they should be deemed to be "competent to handle their own affairs," and that point was fixed at *adulthood*. As to full bloods they are to be released as the Secretary finds them to possess the requisite degree of competency.

Our concession of the soundness of the proposition stated by plaintiff in error at page 26 of his brief, that the presence of a Federal Question on a writ is not affected by the question whether the state court made reference to it, renders examination of the cases cited under that proposition unnecessary. Those cases do not hold that the mere assertion of a Federal Question by a plaintiff in error gives this Court jurisdiction, nor contradict the established rule that even when a Federal Question is raised the judgment below should be

affirmed on such a motion as we now present, when the decision under review is so manifestly correct as to require no further argument.

## Congress' Attitude Toward Indians.

Plaintiff in error's argument at pages 13, 14, of his brief concerning the Government's status as guardian for Indians only serves to show in our favor that Congress must have intended that on release of its guardianship over the Indian's property there would be some substituted governmental protection in the Indian's behalf, making more significant the provision of the Act of May 8, 1906, for subjection of the Indians to state law.

We dispute the assertion made in the same paragraph of the opposing brief that there is any essential difference between the effect of a fee simple patent to an Indian made subject to state law concurrently with the issuance of the patent and any other fee simple patent issued by the United States to a person already subject to such laws. In either case, the patent is conclusive as to the vesting of title in the patentee, but the validity of conveyance from him is to be tested by the state laws.

We controvert plaintiff in error's assertion at page 24 of his brief that the federal government has facilities for ascertaining the age of an Indian superior to those of the state. At least, those superior facilities failed in this particular case, for it is admitted that the *ex parte* affidavits on which the Secretary of Interior found adulthood were inaccurate, and the facilities in

the state courts for proving the Indian's true age were so efficient that plaintiff in error admitted that the Indian did not become of age until two years after the date of adulthood stated in the proceedings before the Secretary.

Plaintiff in error's observations at page 18 concerning the presumptions probably indulged by Congress because "the age at which Indians become adults is the same under state and federal law," are easily turned in our favor. Of course, Congress did not presume that in every case the Secretary would be imposed upon by false proof as to the date of an Indian's majority, but it is by no means a violent presumption that Congress knew that in numerous cases there might be such imposition. And this being so, is it not fair to assume that Congress intended that those irregularities could be corrected by the application of the state laws under which a valid conveyance could not be made by a minor? This view is fortified by plaintiff in error's own suggestion at page 19 that *adulthood* was imposed by Congress as the only period during which this Indian could make a valid conveyance for "the protection of the Indian from the results of improvidence due to his immaturity and lack of experience.

Plaintiff in error is right when he says at page 22 that "it is a fundamental principle of statutory construction that Courts will try to give effect to every part of a statute," but there is no part of the Clapp Amendment or any federal statute which even hints at contradiction of the main and plainly expressed purpose of limiting the right of alienation to actual, and not fictional, adults.

Some degree of anomaly necessarily arises under a situation whereby this Indian is necessarily regarded as having reached his majority before the patent issued to him, because of the just principles of law under which a patent must be deemed to be conclusive for the purposes of vesting title in the patentee, as against collateral attack, and the other phase of the situation under which it is undisputed that the Indian was actually a minor. But is not this anomaly most fairly and logically resolved by holding that the mistaken finding of adulthood is not to be given effect beyond the necessary point—the *vesting* of title free from any further control of the federal government, but subject to state laws relating to the disvestiture of title.

As to any hazards involved in buying Indian lands, it is more consistent with the purposes clearly expressed by Congress in all Indian legislation that such purchasers take those hazards, which are commonly known to exist, than that a policy be declared whereby the Congressional intention could be thwarted by easily obtained *ex parte* affidavits as to an Indian's age.

Wherefore, we respectfully submit that either the writ of error should be dismissed, or the judgment below should be affirmed.

MARSHALL A. SPOONER,
*Attorney for Defendant in Error.*

# In the Supreme Court of the United States

OCTOBER TERM, 1916.

No. 600.

F. A. DICKSON,
*Plaintiff in Error,*

AND

C. J. MINOR, F A. DICKSON AND R. L. SMITH, ALSO ALL OTHER PERSONS UNKNOWN CLAIMING ANY RIGHT, TITLE, ESTATE, INTEREST OR LIEN IN THE REAL ESTATE DESCRIBED IN THE COMPLAINT HEREIN, *Defendants,*

*vs.*

LUCK LAND COMPANY, A CORPORATION,
*Defendant in Error.*

## Motions to Dismiss or Affirm and Defendant in Error's Brief Thereon.

MARSHALL A. SPOONER,
*Attorney for Defendant in Error.*

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Appendix.



Cases Referred to.

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No. 600.

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vs.

LUCK LAND COMPANY, A CORPORATION,

*Defendant in Error.*

---

## MOTIONS TO DISMISS OR AFFIRM.

Now comes Luck Land Company, the defendant in error, by Marshall A. Spooner, its counsel, and moves the Court to dismiss the writ of error herein on the ground that the Court had and has no jurisdiction of this case, or to affirm the judgment of the Supreme Court of Minnesota upon the ground that, although the record may show that this Court has jurisdiction, yet it is manifest that the writ of error was taken for delay only, and that the questions on which the decision of the cause depend are so frivolous as not to need further

argument.

MARSHALL A. SPOONER,
*Attorney and Counsel for Defendant in Error.*

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## NOTICE OF SUBMISSION OF MOTIONS TO DISMISS OR AFFIRM.

To F. A. Dickson, Plaintiff in Error, and his Attorneys, Frank Healy, Esq., Charles C. Haupt, Esq., and Clyde R. White, Esq.:

Sirs: Please take notice that on the annexed papers herein, and on all the files and proceedings herein, I shall submit to the Supreme Court of the United States, at a stated term thereof on the 9th day of October, 1916, at the Capitol in the City of Washington, in the District of Columbia, at the opening of the Court on that day, or as soon thereafter as counsel can be heard, the motions of which the foregoing are copies; and that I shall submit with said motions and in support of the same the statement of facts, argument and other papers hereto annexed.

Bemidji, Minnesota, August 22, 1916.

MARSHALL A. SPOONER,
*Attorney and Counsel for Defendant in Error.*

Service of copies of the foregoing motions, notice, and the statement of facts, argument and other papers above mentioned hereby acknowledged this ..... day of ....., 1916.

.....

.....

*Attorneys for Plaintiff in Error.*

## STATEMENT OF THE FACTS.

To determine adverse claims to a tract of allotted and patented land within the White Earth Indian reservation in Minnesota this action was brought by defendant in error against plaintiff in error. Both parties claim under the Indian patentee, a mixed-blood Chippewa, and the principal point in controversy concerns the validity of conflicting conveyances made by the Indian, as affected by his actual minority at the time he executed the two deeds under which the plaintiff in error claims, and by the fact that the patent issued before the Indian actually became of age; the Land Department's finding of adulthood having been based upon false affidavits as to his age.

It is not disputed that the Indian became of age in April or May, 1910. Hence, he was a minor when, on April 24, 1908, he applied for a patent, and when, on the same day, he gave the first deed under which the plaintiff in error claims; when, on August 6, 1908, the patent was issued, and when, on January 17, 1910, the other deed under which plaintiff in error claims was executed. The deeds under which we claim were executed after the Indian actually became of age—November 23, 1911 and July 2, 1912, respectively.

For a concise and accurate statement of the theory on which the case was tried and was presented to the Minnesota Supreme Court on appeal, we quote from the opinion of the latter court, which will be found in full in the Appendix hereto:

> "On the theory that the Indian had a right to avoid these deeds [those under which defendant-

> plaintiff in error claims] after he became of age, and did so when he gave the deeds under which the plaintiff [defendant in error] claims, it was held that the plaintiff had the title. *The finding as to the age of the Indian is not assailed as being against the evidence, nor does defendant question the result reached, if it can be held that it was open to prove that the Indian was a minor. The claim of defendant is that the United States when it issued the patent, found that the Indian was an adult, and that this finding is conclusive.*"

The trial court and the state supreme court determined that the patent was conclusive as to the Indian's adulthood at the time the patent issued, for the purpose of the *vesting of title in him*, but that the patent does not preclude inquiry into the age of the Indian patentee "for the purpose of determining the validity of a *conveyance from him.*" And it is against this holding that plaintiff in error's assignments of error are directed. (See the Appendix hereto).

Therefore, the questions presented by our motions are:

(1) Does a holding that the patent to the Indian is not conclusive as to his being of age at the time the patent issued, as concerns the validity of conveyances from him after vesting of title in him, present a Federal Question, so as to give this Court jurisdiction?

(2) If so, is the holding so plainly correct that plaintiff in error's contentions to the contrary are so frivolous as not to need further argument?

## ARGUMENT AND AUTHORITIES.

### The Writ Should be Dismissed for Want of Jurisdiction.

We respectfully assert that no Federal Question is presented by the writ of error.

Except as the question may be controlled by the hereinafter cited statutes relating to Indian affairs, the plaintiff in error does not deny that it is the established rule in Minnesota that the execution of a deed within a reasonable time after arriving at majority is a disaffirmance of a prior deed of the same land to another person during infancy.

*Dixon v. Merrit,* 21 Minn. 196.

*Dawson v. Helmes,* 30 Minn. 107.

We take the position that there has not been, even if there could be, any federal interference with the state's right to pass exclusively upon the capacity of the grantors to convey lands which have passed into private and fee simple ownership.

### Division of State and Federal Powers.

The legal power of the state to regulate conveyances of lands which have come under private ownership is just as great as the power of the United States to determine when public lands shall be granted to private owners.

> "The law of the place in which land is situate governs the transfer of land."
>
> 13 *Cyc.* 526, cited numerous authorities.

"It is well settled that to the law of the state in which land is situated we must look for rules which govern its alienation and transfer."

*Robards v. Marley,* 80 Ind. 185, 187.

"All questions of a grantor's capacity to convey are to be determined with reference to the law of the place where the land is situated."

9 *Am. & Eng. Enc.* (2nd Ed.) 109.

"The state laws are supreme within the state on all subjects to which they constitutionally relate. The federal government cannot gainsay such laws nor resist their authority."

1 *Lewis' Sutherland on Statutory Construction* (2nd Ed.) 22.

## The Federal Statutes Relied on by Plaintiff in Error Show Want of Jurisdiction.

That Congress has not attempted to control the validity of conveyances from Indian patentees such as are here concerned, and has expressly left that as a matter for control by the state, appears from the language of the following statutes relied upon by plaintiff in error in all of his assignments of error.

*Act Cong. Feb. 8, 1887, sec. 5; 24 Stat. at L., 388, 3 Fed. Stat. Ann. 492:*—A *trust* patent must declare that the United States will hold the land "in trust for the sole use and benefit of the Indian * * *, or in case of his decease, of his heirs *according to the laws of the state or territory where such land is located* and that at the expiration of such [trust] period, the United States will convey the same by patent to said Indian or his heirs as aforesaid, in fee, *discharged of said trust* and free of all charge or encumbrance whatsoever; * * *"

*Act Cong. May 8, 1906, 34 Stat. at L. 182*:—"* * * *When the lands have been conveyed to the Indians by patent in fee,* * * * then each and every allottee shall have the benefit of and *be subject to all the laws, both civil and criminal, of the state* or territory in which they may reside; * * * provided, further, that *until the issuance of the fee simple patents,* all allottees to whom trust patents shall hereafter be issued shall be *subject to the exclusive jurisdiction of the United States.*"

Clapp Amendments, Act Cong. June 21, 1906 (34 Stat. at L. 325, 353) and Act March 1, 1907 (34 Stat. at L. 1015, 1034):—"That all restrictions as to the sale * * * for [of?] allotments within the White Earth Reservation * * * held by *adult* mixed blood Indians are hereby removed, and the trust deeds * * * are hereby declared to *pass the title* in fee simple, or *such mixed bloods,* upon application, shall be entitled to receive a patent in fee simple for such allotments."

Since these statutes, being the ones relied upon by plaintiff in error in his assignments of error, do not purport to interfere with the laws of the state under which the grantor of a valid conveyance must be an adult, and, on the contrary, expressly provide on issuance of patents the Indians shall be subject to the state laws, and clearly show that at that time the jurisdiction of the United States shall terminate, where is there any ground for saying, as is asserted in the assignments of error herein, that the validity of any federal statute or authority was questioned in this case?

It was admitted by us, and declared by the courts below, that the patent in this case was conclusive evi-

dence of title in the patentee. Do not this admission and declaration, and the fact that the only issue in the case was as to the validity of conveyances *from*, rather than *to*, the Indian avoid any Federal Question?

Since the state supreme court gave the full force to the cited federal statutes to which they are entitled—as vesting fee simple title in the Indian and relinquishing to the state the federal government's jurisdiction over the land from that time forth—there has been no violation of U. S. Const. art. VI, which requires state judges to respect the federal laws and constitution, as asserted under the third assignment of error.

The provision of U. S. Const. art. IV, sec. 3, giving Congress power to control "property belonging to the United States," and mentioned under the same assignment of error, is plainly inapplicable to Indian lands held in trust for the allottees thereof. But, if the provision could be said to be applicable to such lands, it must be clear that Congress, in the particular federal statutes above cited, has surrendered its control at the moment title has vested in the Indian under a fee simple patent.

Likewise, there are two obvious answers to plaintiff in error's reliance in the third assignment of error on the authority given Congress, under Const. art. I, sec. 8, to regulate commerce with the Indian tribes.

(1) The provision does not apply to the sale of lands patented to Indians, as in this case. "Commerce with the Indian tribes," as used in the Constitution, relates only to the sale, exchange and transportation of *commodities*.

*United States v. Holliday*, 70 U. S. (3 Wall.) 407,

409.

*Hopkins v. United States,* 171 U. S. 578.

(2) Congress has rendered Indian patentees subject to state laws, as seen in the provision of Act Cong. Feb. 8, 1887, *supra,* for discharge of the Government's trust on issuance of a fee simple patent, and for succession "according to the laws of the state"; and as shown by the provisions of Act May 8, 1906, *supra,* that on issuance of such patent, each allottee shall become subject to state laws, and that exclusive jurisdiction of the United States shall exist to that point only.

That the mere fact that the common title under which both parties hereto claim rests on a federal patent presents no Federal Question is well established by the authorities cited below. The point involved in this action relates to the validity of conveyances which are plainly governed by state law because taking effect after the jurisdiction of the United States, under the federal statutes cited, had been terminated by issuance of a fee simple patent to the conveying Indian.

## AUTHORITIES.

In dismissing the writ of error in *Miller's Executors v. Swann,* 150 U. S. 132, because the judgment below rested upon a construction by the state court of a statute of the state, which was sufficiently broad to sustain the judgment, the court said (p. 137):

> "A State * * * may authorize the disposal of its own lands in accordance with the provisions for the sale of the public lands of the United States; and in such cases an examination may be necessary of the *acts of Congress,* the rules of the Federal

courts, and *the practices of the Land Department, and yet the questions for decision would not be of a Federal character.* The inquiry along Federal lines is only incidental to a determination of the local question of what the State has required and prescribed. The matter is one of state rule and practice. The facts by which the state rule and practice are determined may be of a Federal origin."

Congress granted swamp lands within Illinois to that state, and *Cook County v. Calumet & Chicago Canal Co.*, 138 U. S. 635, involved a construction of a state grant of such lands to counties. In dismissing a writ of error, the United States Supreme Court said:

"The validity of a statute is not drawn in question every time rights claimed under such statute are controverted, nor is the validity of an authority every time an act done by such authority is disputed. The validity of the authority here was not primarily denied, and the denial made the subject of direct inquiry."

The decision in this case proceeded on the ground that the acts of the Illinois legislature were in harmony with the act of Congress, and that the state court's decision was not adverse to a title specially set up or claimed under an authority exercised under the United States, nor against the validity of such an authority.

In holding that the United States Supreme Court has no jurisdiction over the decision and judgment of a State court upon adverse claims to real estate made under a common grantor whose title was derived from the United States and is not in dispute, this Court said in *People ex rel. Hastings v. Jackson*, 112 U. S. 233, 237:

"The case is clearly governed by *Romie v. Casanova*, 91 U. S. 379, and *McStay v. Friedman*, 92 U.

S. 723, in which it was decided that in a suit for the recovery of lands, *where both parties claimed under a common grantor whose title from the United States was admitted, this court had no jurisdiction* for the review of the decisions of a State court upon questions relating only to the title acquired by the several parties, under their respective grants, from the common grantor, and which were not in themselves of a federal character.

"Some reliance was had in the argument on the act of Congress * * * 'to quiet land titles in California,' but that act * * * *purports only to confirm the title of the State* * * *. No attempt is made in that act to provide for the settlement of the rights of conflicting claimants under the State. *Congress contented itself with the confirmation of the State's title, and left all who claimed under that title to their remedies in the courts or other tribunals provided by law for that purpose.* It follows that we have no jurisdiction of this case, and it is accordingly dismissed."

In *Chever v. Horner*, 142 U. S. 122, the plaintiff and the defendant in ejectment in a state court both claimed under an entry under a Federal townsite act. Defendant claimed under a deed executed by a probate judge, and delivered, several years before another deed was executed to plaintiff by the probate judge's successor. The older deed was assailed as being defective for noncompliance with the requirements of a territorial statute, prescribing rules for the issuance of such deeds. The state supreme court held that the deed, being regular on its face, was not subject to collateral attack.

In dismissing a writ of error, this Court held that the decision of the state court proceeded upon a proper construction of a territorial law, without regard to any right, title or privilege of the plaintiff under an act of Congress. The court said (p. 127):

"And the rulings in regard to the deeds issued by the probate judges were rulings not involving the denial of a title, right or privilege specially set up under the acts of Congress, by Chever [plaintiff] as against Horner, but compliance with requirements of the territorial act. The question was whether, under the law of Colorado, the title which had passed from the United States to the probate judge, passed from Judge Downing to Hughes [defendant's predecessor] or from Judge Kingsley to Chever. There was no pretense that the proceedings prescribed by the territorial act were not in due execution of the trust imposed by the townsite acts, and the conclusion reached was based purely upon the local law. BOTH PARTIES ADMITTED THE TITLE OF THE PROBATE JUDGE, AND THE REAL CONTROVERSY RELATED TO THE TRANSFER OF THAT TITLE TO ONE PARTY OR THE OTHER. Under these circumstances the writ of error cannot be sustained, and it must be dismissed."

In *New Orleans Waterworks Co. v. Louisiana*, 185 U. S. 336, 344, 345, it was said:

"It has long been the holding of this court that in order to warrant the exercise of jurisdiction over the judgments of state courts there must be something more than a mere claim that a Federal question exists. There must, in addition to the simple setting up of the claim be some color therefor, or, in other words, the claim must be of such a character that its mere assertion does not show it destitute of merit; there must be some fair ground for asserting its existence, and, in the absence thereof, a writ of error will be dismissed, although the claim of a Federal question was plainly set up. Thus in *Bolinger v. Hartogen*, 6 Wall. 238, the Chief Justice (at page 241) said: 'Something more than a bare assertion of such an authority seems essential to the jurisdiction of this court. The authority is created by the act to one having a real existence, derived from competent governmental power.' This

case arose under the twenty-fifth section of the *Judiciary Act*, and jurisdiction was sought to be maintained upon the assertion that the validity of an authority exercised under the United States was drawn in question, and the decision was against its validity. It was held not sufficient to make the claim, but there must be some color of foundation for its assertion.

"In *New Orleans* v. *New Orleans Waterworks Company*, 142 U. S. 79, upon a motion to dismiss the writ of error on the ground that no Federal question was involved, it was said by the court (page 91): 'While there is in the amended and supplemental answer of the city a formal averment that the ordinance No. 666 impaired the obligation of a contract arising out of the act of 1877, which entitled the city to a supply of water free of charge, the bare averment of a Federal question is not to all cases sufficient. It must not be wholly without foundation. There must be at least color of ground for such averment, otherwise a Federal question might be set up in almost any case, and the jurisdiction of this court invoked simply for the purpose of delay.'

"Again, in *Gamble* v. *Western Land Company*, 167 U. S. 651, upon a like motion to dismiss the writ of error, the court said: " " " 'a real and not a fictitious Federal question is essential to the jurisdiction of this court over the judgment of state courts,' citing the two cases just above referred to.

"In *St. Joseph & Grand Island Railway Company* v. *Steele*, 167 U. S. 659, it was said by the court (page 662):

"'We cannot accede to the proposition that because the acts of Congress, which authorized the construction of the bridge in question, gave the right to build a railroad and rail bridge, the concurrent power of the State to tax did not extend to the bridge in both respects. For we are again told the making of such construction raised a Federal question of a character to confer original jurisdiction in the Circuit Court of the United States, the

every mere allegation of the existence of a Federal question in a controversy will suffice for that purpose. There must be a real, substantive question, on which the case may be made to turn.'

"Although the above case relates to the jurisdiction of the Circuit Court, yet, so far as this question is concerned, the principle is the same in both courts.

"And in *Wilson v. North Carolina*, 169 U. S. 586, it was held that there must be a real and substantial Federal question existing in order to give this court jurisdiction to review a judgment of a state court, and if the question raised were so unfounded in substance that the court would be justified in saying there was no fair color for the claim that it was of a Federal nature, the writ would be dismissed.

"These cases show the rule and its limitations, and where by the record it appears that although a claim of a Federal question had been plainly made, if it also clearly appear that it lacked all color of merit, and had no substance or foundation, the mere fact that it was raised was not sufficient to give this court jurisdiction."

The nature of the taxable interest of a railway company in unpatented lands, expressly made subject to taxation with the assent of Congress, does not present a Federal question.

*Central Pacific Railroad Co. v. Nevada*, 162 U. S. 512.

*When there is no attack on a patent, a decision of a state court as to who is entitled to the land presents no Federal question.*

*Rogers v. Clark Iron Co.*, 217 U. S. 589.

The fact that parties claim under patents from the United States does not give the United States Supreme

Court jurisdiction of a question relating to the proper boundary between them.

*Moreland v. Page,* 20 How. 523.

> "The mere fact that the plaintiff in error asserts title under a clause of the Constitution, or an act of Congress, is not in itself sufficient, unless there be at least a plausible foundation for such claim. A party may assert a right, title, privilege or immunity without even color for such assertion, and if that were alone sufficient to give this court jurisdiction a vast number of cases might be brought here simply for delay or speculative advantage. *New Orleans Waterworks Co. v. Louisiana,* 185 U. S. 336."
>
> *Iowa v. Rood,* 187 U. S. 87, 92.

## The Judgment Should be Affirmed, Even if the Record Shows Jurisdiction.

If it be found by this Court that our point that the writ of error should be dismissed for want of jurisdiction is not well taken, we respectfully submit that the judgment of the Minnesota Supreme Court should be affirmed on the ground that the writ was taken for delay only, and that the questions presented by plaintiff in error are frivolous on their face.

We regard these last two mentioned grounds as being interdependent, in that, if plaintiff in error's position is frivolous, it may be inferred that the persistent obstruction to our enjoyment of the property in question, interposed in the trial court and in the state supreme court, and attempted to be interposed in this Court, has not been made in good faith. We therefore address our argument specially to the ground of our

motions that the assignments of error are frivolous on their face.

All the rights claimed by the plaintiff in error rest on the federal statutes which have been hereinbefore set out. There is no pretense that the Interior Departmnt exercised any lawful authority except as the same depended upon those statutes.

The gist of the somewhat verbose and redundant assignments of error will be found to be a claim on plaintiff in error's part that, under the federal statutes mentioned, the patent issued to the Indian, howsoever improvidently issued in view of his admitted actual minority, concluded, not only the VESTING of title in him, but his right to CONVEY, without regard to the state laws.

That this is a frivolous contention, we respectfully submit, has been shown under our argument on the question of jurisdiction.

Assignments of error IV-VII are directed against the holdings of the Minnesota Supreme Court, as found in that court's opinion which is printed in full in the appendix hereto; the assignments merely presenting in varying forms the single objection already discussed—that the court below erred in deciding that the patent to the Indian was not conclusive as to his adulthood, so far as concerns the validity of conveyances from him.

Does it need further argument to sustain the correctness of the lower court's ruling as shown by the following language in that tribunal's opinion:

> "The claim of defendant is that the United States when it issued the patent found that the Indian was an adult, and that this finding is conclusive. It is true that there was this finding, as the law re-

quired that the patentee be an adult. *It is correct that the Indian's title could not be attacked on the ground that he was under age when the patent issued.* The patent is conclusive evidence of title in the patentee as against the government and all claiming under junior patents or titles until it is set aside or annulled by some judicial tribunal. *Steel v. Smelting Co.,* 106 U. S. 447, 1 Sup. Ct. 389, 27 L. Ed. 226. * * *

"*But there is no case holding that the validity of transfers by the patentee may not be attacked by showing his incapacity, for minority or any other reason, to make a valid transfer.* * * *

"When the lands were conveyed to the Indian by a patent in fee, he became the absolute owner, and his title was unassailable. But in his further dealings with the property the law of the state, not those of the federal government, control."

The court then proceeds to refer to the various provisions of the federal statutes hereinbefore discussed under which it is expressly provided that on issuance of fee simple patents, the allottees should become subject to the laws of the state, and that the exclusive jurisdiction of the United States should continue only "UNTIL the issuance of the fee simple patents."

As supporting the view adopted by the court below, we cite *Johnson v. Towsley,* 13 Wall. 72, holding that, although "action of the land office in issuing a patent * * * is conclusive of the legal title," after a patent has been issued title has passed beyond the control of the Federal Government. See, also, *Moore v. Robbins,* 96 U. S. 530, to the same effect.

AUTHORITIES ON FRIVOLOUSNESS OF WRIT.

Even though a federal question be presented, motion to affirm will be sustained when the assignments of error are frivolous.

*Blythe v. Hinckley,* 180 U. S. 333.

The question presented in the last cited case was whether an alien could inherit under the laws of California, plaintiff in error claiming that the California statute, permitting an alien to inherit encroached upon the treaty making power of the United States. The court said:

> "The sole question now remaining before us arises as to the claim made by plaintiff in error under the Constitution of the United States, already referred to, and * * * we now say that the provision of the Federal Constitution had no bearing in this case, and that the question is, in our opinion, entirely free from doubt.
>
> "Plaintiff urges that never before has the question been directly passed upon by this court. If he means that it has never heretofore been asserted, that in the absence of any treaty whatever upon the subject, the state has no right to pass a law in regard to the inheritance of property within its border by an alien counsel may be correct. The absence of such a claim is not so extraordinary as the claim itself. * * *
>
> "There has not been cited a single case where any doubt has been thrown on the right of a State, in the absence of a treaty, to declare an alien incapable of inheriting or taking property and holding the same within its borders. * * * The claim which the plaintiff in error founds upon the section of the Federal Constitution is too plainly without foundation to require argument."

The want of merit in the contention that a state statute limiting the amount of recovery is controlling in a suit arising under the Federal Employers' Liability Act is so well established by previous decisions of the Federal Supreme Court concerning the exclusive operation and effect of that statute over the subject with which it deals that the presence of such question in the case will not prevent the Federal Supreme Court from granting a motion to affirm the judgment on a writ of error to a state court.—*C. R. I. & P. Ry. Co. v. Devine,* 36 Sup. Ct. Rep. 27.

Although plaintiff in error places himself in the light of championing the cause of federal authority, it is readily to be seen that his attempted extension of that authority beyond the bounds of the doctrine of *res adjudicata* and beyond the bounds of authority self-imposed by the Government through Congress in the acts herein cited and discussed, would result in the defeat of the Government's fixed policy to guard Indians against their own improvident conveyance during actual minority. On the other hand, our position gives full respect to this policy without stretching the state's prerogatives beyond the point marked by Congress itself as the beginning of state jurisdiction.

Respectfully submitted.

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*Bemidji, Minnesota.*

# Appendix

(Opinion of the Minnesota Supreme Court—157 N. W. 555, 556.)

BUNN, J. This is an action to determine adverse claims to certain real estate in Becker county. Plaintiff claims title to the property; while defendant Dickson insists that the title is in him. Both claim under the Indian Me-gis-way-waish-kung. The trial court decided in favor of plaintiff, and defendant Dickson appeals from an order denying his motion to amend the conclusions of law and order for judgment, or for a new trial.

The Indian is a mixed-blood Chippewa of the White Earth Indian reservation. The lands in controversy are within the reservation, and prior to April 24, 1908, were allotted to the Indian. On that day he applied for a patent to the lands in fee simple, and on August 6, 1908, this patent was issued by the United States to the Indian. The patent was recorded in Becker county November 16, 1908. Defendant Dickson claims title under two deeds from the Indian—one made April 24, 1908; the other January 17, 1910. Plaintiff claims title under two subsequent deeds from the Indian, dated, respectively, November 23, 1911, and July 2, 1912.

[1] The trial court found as a fact that the Indian was born in April or May 1889, and therefore was a minor at the time he gave the deeds under which defendant Dickson claims title. On the theory that the

Indian had a right to avoid these deeds after he became of age, and did so when he gave the deeds under which plaintiff claims, it was held that plaintiff had the title. The finding as to the age of the Indian is not assailed as being against the evidence, nor does defendant question the result reached, if it can be held that it was open to prove that the Indian was a minor. The claim of defendant is that the United States when it issued the patent, found that the Indian was an adult, and that this finding is conclusive. It is true that there was this finding, as the law required that the patentee be an adult. It is correct that the Indian's title could not be attacked on the ground that he was under age when the patent issued. The patent is conclusive evidence of title in the patentee as against the government and all claiming under junior patents or titles until it is set aside or annulled by some judicial tribunal. *Steel v. Smelting Co.*, 106 U. S. 447, 1 Sup. Ct. 389, 27 L. Ed. 226. Many other authorities might be cited to these propositions, but they are so well settled and undisputed that it is unnecessary.

[2] But there is no case holding that the validity of transfers by the patentee may not be attacked by showing his incapacity, for minority or any other reason, to make a valid transfer. There is no case holding that the finding of the Secretary of the Interior or the Land Department that the Indian is an adult settles this question for all purposes and for all times. It settles it conclusively in so far as the right of the Indian to take and hold title is concerned, but the department has not attempted to adjudicate the capacity of the Indian to transfer his title.

[3] When the lands were conveyed to the Indian by a patent in fee, he became the absolute owner, and his title was unassailable. But in his further dealings with the property the laws of the state, not those of the federal government, control. The act of Congress of February 8, 1887 (24 Stat. at Large, 388, c. 199), and the act of May 8, 1906 (34 Statutes at Large, 182, c. 2348), provided that, when lands were conveyed to Indians by patent in fee, each and every allottee shall have the benefit of and be subject to the laws of the state or territory in which they may reside. The Clapp Amendment of 1906 (Act June 21, 1906, c. 3504, 34 Stat. 325) and 1907 (Act March 1, 1907, c. 2285, 34 Stat. 1015) provided:

"That all restrictions as to the sale, incumbrance or taxation of allotments within the White Earth reservation heretofore or hereafter held by adult mixed-blood Indians are hereby removed and the trust deeds heretofore or hereafter executed by the department for such allotments are hereby declared to pass title in fee simple."

The suggestion that by the Clapp Amendment, Congress intended to remove any restrictions as to the sale of their lands by Indians except those that the federal government had heretofore imposed is without merit. There can be no doubt, both under the language of the Acts of February 8, 1887, and of May 8, 1906, and under the decisions, that the validity of sales or transfers by the Indian is a matter to be determined by the state law.

It follows that the courts of this state are not precluded from inquiring into the age of an Indian patentee for the purpose of determining the validity of a conveyance from him, or for any other purpose save to im-

peach his title to the land. The conclusion necessarily follows that the trial court was right in holding that the question of the Indian's age was open in this case, and, the finding on that question not being attacked, the result reached by the trial court was clearly correct.

Order affirmed.

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## PLAINTIFF IN ERROR'S ASSIGNMENTS OF ERROR.

The said Petitioner, F. A. Dickson, Plaintiff in Error for Writ of Error from the Supreme Court of the United States to the Supreme Court of the State of Minnesota, in the above entitled procedings, by Frank Healy, and Charles C. Haupt and Clyde R. White, his attorneys, at the same time with the presenting and filing of his petition for writ of error in the above entitled proceedings, states that in the record, proceedings, decision and final judgment of the Supreme Court of the State of Minnesota, in the above entitled matter, there are manifest errors, in this,

### I.

In said suit or proceedings in the Supreme Court of Minnesota there was drawn in question, as more fully shown in and by the record therein, the validity of the hereinafter designated and enumerated statutes of the United States, and the validity of the authorities exercised under the United States by the Secretary of the Interior, his subordinates, bureaus and departments, in

and about the issuing of the fee simple patent to the lands in said suit involved, and the decision and judgment of the Supreme Court of Minnesota were against the validity of such statutes and authorities and in favor of the validity of the statutes of the state of Minnesota, in this, that under and by virtue of such statutes and authorities of the United States the Indian to whom the lands involved in this suit were patented in fee, and through whom by subsequent mesne conveyances the plaintiff in error claims to have become the owner in fee of said lands, became and was, after the issuance of said fee simple patent, possessed of the absolute and unrestricted right and privileges to sell, incumber and convey said lands, the constitution of the State of Minnesota and its statutes and laws defining the age at which one becomes an adult and making conveyances executed by minors voidable at their option within a reasonable time after they attain their majority, to the contrary notwithstanding; and said decision and judgment by holding, as it did, that the aforesaid statutes and laws of the State of Minnesota, and not the aforesaid statutes of the United States and the aforesaid authorities exercised under them, governed, controlled, and regulated the conveyance of said land by said Indian after he secured patent in fee thereto, and by holding that under said statutes of the State of Minnesota the conveyance of said lands made by said Indian to the predecessors in interest and the grantors of plaintiff in error were voidable and were avoided by the later conveyances which said Indian made after attaining his actual majority to the defendant in error and its predecessors in interest and grantors, and that therefore the defendant

in error was the owner in fee of said lands, and that plaintiff in error had no right, title or estate in or to the same, denied to said statutes of and authorities exercised under the United States so much of their force and effect as plaintiff in error claims they possess in giving to said Indian the right to sell, incumber and convey said lands, and to that extent denied the validity of such statutes and authorities, in respect of all of which said Supreme Court of the State of Minnesota erred.

II.

In said suit or proceeding in the Supreme Court of the State of Minnesota there was drawn in question the validity of those statutes of the State of Minnesota which define an adult to be a person who has attained the age of twenty-one years and which make deeds and conveyances executed by a minor voidable at his election within a reasonable time after he attains his majority; and such statutes were, as plaintiff in error contended and argued, in said suit and proceeding, repugnant to the statutes and laws of the United States, among others, the Act of Congress of February 8, 1887 (Statutes at Large, 24-388) and the various acts amendatory thereof and supplementary thereto, and the Act of Congress of June 21, 1906 (34 Statutes at Large 325) as amended by the Act of Congress of March 1, 1907 (34 Statutes at Large 1015), and the Act of Congress of May 8, 1906 (34 Statutes at Large 182) under and by virtue of all of which the Indian patentee of the lands involved in this suit had and possessed an absolute and unconditional right to sell, incumber and convey his

said lands, the laws aforesaid of the State of Minnesota to the contrary notwithstanding; and in said suit or proceeding the Supreme Court of the State of Minnesota decided and held, in substance, that the conveyance by said Indian patentee were regulated and controlled by the said statutes of the State of Minnesota and not by the federal statutes aforesaid, and that under such statutes of the State of Minnesota the conveyance by the said Indian to the predecessors in interest and grantors of plaintiff in error were voidable at the option of said Indian patentee and had been by him avoided by his subsequent conveyances to the defendant in error and its predecessors in interest and grantors; and in all of these respects, therefore, the aforesaid judgment and decision of the Supreme Court of the State of Minnesota was in favor of the validity of the said statutes of the State of Minnesota and against the validity of the said statutes of the United States, and was therefore erroneous.

III.

That said decision and judgment is, in substance and effect, against the rights, title and privileges of plaintiff in error in and to and about the lands involved in this action, which rights, title and privileges plaintiff in error claimed and asserted (1) under and by virtue of the Constitution of the United States, more particularly, (a) under Article VI, thereof which provides that "This constitution, and the laws of the United States which shall be made in pursuance thereof * * * shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the con-

stitution or laws of any state to the contrary notwithstanding," and (b) Section 3 of Article IV, which provides that "The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States," and also (c) Section 8 of Article I, which provides that "The Congress shall have power to regulate commerce * * * with the Indian tribes," and (2) under the laws and statutes of the United States, more particularly, (a) the Act of Congress of February 8, 1887, chapter 119 (24 Statutes at Large 388) and the various acts amendatory thereof and supplementary thereto, (b) the Act of Congress of June 21, 1906, (34 Statutes at Large 325), as amended by the Act of Congress of March 1, 1907 (34 Statutes at Large 1015), (c) the Act of Congress of May 8, 1906 (34 Statutes at Large 182) and (d) all other laws and statutes of the United States relating to, governing or affecting the matters in controversy in this suit, and (3) also under the commissions held and exercised by the Secretary of the Interior and his subordinates, bureaus and departments, under the United States, in and about the issuance of the fee simple patent to the Indian, as more fully shown by the records and proceedings in this case, which rights, title and privileges plaintiff in error, throughout the proceedings in the District and Supreme Courts of the State of Minnesota, specially set up and claimed under said constitution, statutes, commissions, and authorities; in this, that under and by virtue of the aforesaid constitution, statutes, commissions and authorities, the Indian to whom said lands were patented in fee and through whom plaintiff in error derived his rights, title and

privileges in and to said lands, became and was, from and after the issuance of said fee simple patent to him, possessed of the absolute and unrestricted right to sell, incumber and convey said lands the constitution and laws of the State of Minnesota relating to conveyance of real estate by minors, to the contrary notwithstanding; in respect of all of which said Supreme Court of the State of Minnesota erred to the injury of the plaintiff in error.

IV.

The said Supreme Court of the State of Minnesota in said suit or proceeding erred in holding, deciding and adjudging that "The issuance of a patent does not prevent the courts of this state from inquiring into the question of the Indian's age for the purpose of determining the validity of a conveyance by him," for the reason that under and by virtue of the constitution and statutes of the United States hereinbefore referred to and the commissions and authorities hereinbefore described, said Indian patentee while within the sole and exclusive jurisdiction of the United States, by the lawful exercise of the powers and authorities of federal officers thereunder became seized and possessed of the right to sell, incumber and convey his said lands, which right he possessed as a citizen of the United States beyond the power or authority of any state to remove, abridge or restrict; and the holding, decision and adjudication thus made, under the facts and circumstances of the case was against the title, rights and privilege of the plaintiff in error in and to and about the lands involved, all of which he specially set up and claimed under such con-

stitution and statutes and under the commissions and authority exercised by the Secretary of the Interior and his subordinates under such constitution and statutes.

V.

The said Supreme Court of the State of Minnesota in said proceedings erred under the facts and circumstances of this case in holding, adjudging and deciding that "Under the federal statutes after a patent in fee is issued to an Indian, questions as to the validity of his subsequent transfers of the land are controlled by the laws of the state," for the reason that under the constitution and statutes of the United States and by virtue of their necessary force and effect the Indian in this case, while under the exclusive jurisdiction of the United States was given and granted the absoluted and unconditional right to sell, incumber and convey the lands patented to him, and the necessary effect and consequence of such holding is to deprive plaintiff in error of his right, title and privileges in said lands which he specially set up and claimed in said suit under such constitution and statutes and the commissions and authorities exercised by the Secretary of the Interior and his subordinates, and said decision is therefore against such rights, title and privileges of the plaintiff in error.

VI.

The Supreme Court of the State of Minnesota in said proceedings, under the facts and circumstances thereof, erred in holding, deciding and adjudging "It (the patent) settles it conclusively in so far as the right of the

Indian to take and hold title is concerned, but the department has not attempted to adjudicate the capacity of the Indian to transfer his title," for the reason that under the constitution and statutes of the United States and the commissions and authorities exercised by the Secretary of the Interior and his subordinates thereunder, the determination of such department that the Indian was entitled to a fee simple patent was necessarily a determination and adjudication that all restrictions as to the sale, incumbrance or conveyance of such lands were removed and the Indian patentee was thereafter entitled to sell, incumber and convey them; and hence the decision in question was against the right, interest and privilege of the plaintiff in error in and to the lands involved, which rights he specially set up and claimed in said action under and by virtue of the constitution, statutes, commissions and authorities aforesaid.

VII.

The Supreme Court of the State of Minnesota in said proceedings, under the facts and circumstances of the case, erred in holding, deciding and adjudging "When the lands were conveyed to the Indian by a patent in fee, he became the absolute owner, and his title was unassailable. But in his further dealings with the property the laws of the state, not those of the federal government, controlled. The Act of Congress of February 8, 1887, (24 Stat. L. 388) and the Act of May 8, 1906, (34 Stat. L. 182) provided that when lands were conveyed to Indians by patent in fee, each and every allottee shall have the subject of and be subject to the laws

of the state or territory in which he may reside. The Clapp Amendment of 1906 and 1907 (34 Statutes at Large 325, 1015) provided that 'all restrictions as to the sale, incumbrance and taxation of allotments within the White Earth Reservation heretofore or hereafter held by adult mixed blood Indians are hereby removed and the trust deeds heretofore or hereafter executed by the department for such allotments are hereby declared to pass title in fee simple.' The suggestion that by the Clapp Amendment Congress intended to remove any restrictions as to the sale of their lands by Indians except those that the federal government had heretofore imposed is without merit. There can be no doubt, both under the language of the acts of February 8, 1887 and May 8, 1906, and under the decisions, that the validity of sales or transfers by the Indian is a matter to be determined by the state law,"—for the reason that under the constitution and statutes of the United States and the commissions and authorities exercised under them by the Secretary of the Interior and his subordinates in and about the issuance of fee simple patent to the Indian, the Indian in this case by the determination of such officials and by his patent to these lands became seized and possessed of the absolute and unconditional right to sell, convey and incumber them, and by such statutes became and was a citizen of the United States, entitled to all the rights, privileges and immunities of such citizens, "without in any manner impairing or otherwise affecting the right of any such Indian to tribal or other property;" and hence the decision aforesaid was against the right, interest and privilege of the plaintiff in error in and to the lands

involved herein, which right he specially set up and claimed in said action under and by virtue of the constitution, statutes, commissions and authorities aforesaid.

Wherefore, the said plaintiff in error prays that the said judgment and decision of the Supreme Court of the State of Minnesota be reversed and annulled, and that said plaintiff in error may be restored to all things that he has lost by reason of such judgment, and that judgment be rendered in favor of said plaintiff in error and against said defendant in error.

Dated June 16th, 1916.

# Supreme Court of the United States.

OCTOBER TERM, 1916.

No. 600.

F. A. DICKSON,
*Plaintiff in Error,*

AND

C. J. MINOR, F. A. DICKSON, AND R. L. SMITH, ALSO ALL OTHER PERSONS UNKNOWN CLAIMING ANY RIGHT, TITLE, ESTATE, INTEREST OR LIEN DESCRIBED IN THE COMPLAINT HEREIN,
*Defendants,*

VS.

LUCK LAND COMPANY, A CORPORATION,
*Defendant in Error.*

## Brief of Plaintiff in Error on Defendant in Error's Motion to Dismiss or Affirm.

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### STATEMENT OF FACTS.

This was an action in the District Court of Becker County, State of Minnesota, to quiet title to certain real estate situate in that County, and within the White Earth Indian Reservation.

A full statement of the facts will be found in the record and on pages one (1) to six (6) inclusive of the brief of the plaintiffs in error in the Supreme Court of the State of Minnesota.

Somewhat more briefly sketched the facts were these. George-wah-we-yea-cumig, or Me-gis-way-waish-Kung was a mixed blood Chippewa Indian of the White Earth Indian Reservation in Minnesota. Some time prior to April 24th, 1908, the lands in question were duly allotted to this Indian under and pursuant to the terms and provisions of the Act of Congress of February 8, 1887 (Chapter 119, 24 Stat. L. 388), and the various acts amendatory thereof and supplementary thereto. This allotment was duly approved by the Secretary of the Interior, September 13, 1907, and on February 6th, 1908, a *trust* patent was duly issued to the Indian pursuant to the aforesaid acts of Congress. We do not understand that defendant in error questions the validity or regularity of the proceedings of the government up to this point.

In 1906 and 1907 the so-called Clapp Amendment, 34 Stat. L. 325, 1915, was passed and amended, and as amended this provides,

> "That *all restrictions* as to the *sale, encumbrance* or taxation of allotments within the White Earth Reservation in the State of Minnesota, heretofore or hereafter held by *adult mixed blood Indians* are hereby *removed,* and the trust deeds heretofore or hereafter executed by the Department for such allotments are hereby declared to pass the *title in fee simple,* or *such mixed bloods,* upon application, shall be entitled to receive a patent in fee simple for such allotments."

Under date of April 24, 1908, this Indian made application to the Superintendent and Special Disbursing Agent at White Earth, Minnesota, for a *fee simple patent* to such lands, and accompanied his application with his own and several other affidavits, among them those of his father and mother, alleging among other things that he was an adult, mixed-blood Chippewa Indian of the White Earth Indian Reservation in Minnesota; such proceedings were thereafter duly had before the Department that a fee simple patent was duly issued to the Indian on August 6, 1908, and this was spread upon the records of the Register of Deeds of Becker County on November 16, 1908.

Plaintiff in error and Defendant in error both claim these lands under different grants originally made by the Indian. Plaintiff in error claims under two Warranty deeds from the Indian which are prior to the deeds under which Defendant in error claims. Title by these first two Warranty deeds has become vested in Plaintiff in error by subsequent mesne conveyances.

Defendant in Error claims under two other warranty deeds from the Indian subsequent, both in date and recording to the two deeds above named, and title under said last two warranty deeds has been vested in defendant in error by mesne conveyance subsequent thereto. Upon the trial in the District Court, defendant in error offered evidence tending to prove that the Indian did not become of age until April or May, 1910, and plaintiff in error offered no evidence upon this point at the trial, but

relied upon the principles of law hereinafter asserted. If the question of the Indian's age was an open one in the case, then plaintiff in error's two deeds were given prior to the date at which by the evidence the Indian became of age, and were avoided under Minnesota law by his subsequent deeds to the grantors of defendant in error; but if the question of the Indian's age was foreclosed under the law, as we contend, then plaintiff in error should prevail. The determination of this question under the circumstances of the case involves rights of the plaintiff in error and the defendant in error under the statutes and constitution of the United States.

We shall not endeavor to brief these questions in full upon this motion, but only to the extent necessary to show that a federal question is involved, that the issue of law so presented is *bona fide*, and that plaintiff in error should have an opportunity to be heard in full and to brief carefully the points he claims. The court will observe from the allegations of the complaint of the defendant in error that the *land is vacant and unoccupied*, and that no harm can come to him from such delay as is necessary to a full and fair consideration of the questions involved in the appeal.

## ARGUMENT, POINTS AND AUTHORITIES.

### I.

### A Federal Question is Involved in and Presented by this Appeal.

In the trial of this action in the District Court of Minnesota, as well as in the trial thereof in the Supreme Court of said State, plaintiff in error made the following claims and contentions and urged the following reasons and arguments, and now makes and urges the same here upon this appeal.

1. *The Clapp Amendment, supra, intended to and did confer upon adult mixed blood Indian Allottees of lands in the White Earth Reservation, in the State of Minnesota, to whom pursuant to its provisions patents in fee simple were duly issued, the absolute right to sell, incumber and alienate the lands so patented, the laws of the State of Minnesota making conveyances of real estate by minors voidable at their option within a reasonable time after attaining their majority, to the contrary notwithstanding; and the fee simple patents so issued are final and conclusive evidence of the right of such Indian patentee to sell, incumber and alienate such lands.*

(1) *Conditions at the date of the Clapp Amendment.*

Congress had by law (the Act of Congress of February 8, 1887, Ch. 119, 24 Stat. L. 388) provided a system of allotting to Indians in severalty lands

which had theretofore been held in common by Indian tribes. Section 5, of that act provided, in part, that the Indians to whom, pursuant to its provisions, lands should be allotted, should receive a *trust patent* which was to be of the legal effect and declare that "the United States does and will hold the lands thus allotted, for the period of twenty-five years, *in trust* for the sole use and benefit of the Indian, * * * and that at the expiration of such period, the United States will convey the same by patent to said Indian * * * in fee. And if any conveyance shall be made of the lands set apart, or any contract made touching the same, before the expiration of the time above mentioned, such conveyance or contract shall be *absolutely null and void.*"

In construing this section of the Act of 1887, this Court held, in the case of *United States v. Rickert*, 188 U. S. 432, that neither the land nor the permanent improvements thereon, nor the personal property obtained from the United States and used by the Indian on the allotted lands, are subject to state or local *taxation* during the period of trust established by this section, and that the United States had such an interest in the matter as to entitle it to maintain a suit to restrain such taxation. The ground of the decision was, that to permit such taxation would result in the defeat of the trust relation of the United States, through the sale of such lands for taxes.

The purpose of this restraint upon alienation was the protection of the Indian against the superior

intelligence and greed of the white man.

*Beck v. Flournay Live Stock, etc., Co.*, 65 Fed. 30; 69 Fed. 886.

Section 6 of the Act of 1887, as amended by the Act of Congress of May 8, 1906 (Ch. 2348, 34 Stat. L. 182) provided, in part, as follows::

> "That at the expiration of the trust period and *when the lands have been conveyed to the Indian by patent in fee,* * * * then each and every allottee *shall have the benefit of and be subject to the laws, both civil and criminal, of the state or territory in which they may reside;* and no territory shall pass or enforce any law denying such Indian within its jurisdiction the *equal protection of the law.* * * * Provided, further, *that until the issuance of fee simple patents,* all allottees to whom trust patents shall hereafter be issued shall be *subject to the exclusive jurisdiction of the United States.*"

The Act clearly indicates the purpose of the federal government to retain over the Indian its exclusive jurisdiction until the issuance of fee simple patents to him, prescribes the time when the Indian is to become subject to state law, and provides against discrimination against him by the State.

(2) *Purpose and Intent of the Clapp Amendment.*

The purpose and intent of the Clapp Amendment, the changed policy of the government towards the Indian as therein contained, and the reasons for the change in that policy are set forth by Judge Page Morris in the case of *United States v. Park Land Company*, 188 Fed. 383, as follows:

"Now, as I construe this Clapp Amendment, I take its language as I find it—all restrictions as to the sale, and so forth, for allotments within this reservation heretofore or hereafter held by adult mixed blood Indians are removed. *All restrictions are removed.* And the 'trust deeds' heretofore or hereafter issued by the department for such allotments are declared to pass title in fee simple. It seems to me, gentlemen, that the contention of Mr. Powell is sound, and that the amendment means just what it says, that *all restrictions are removed* as to these allotments held—no matter how held—held by adult mixed bloods. That, it seems to me is what it means. That is the only way I can read it, no matter how held. Therefore, no matter how the adult mixed blood has come to be the holder or owner of an allotment or part of an allotment, whether by selection, that is, as the original allottees, or by inheritance from a full blood, or by inheritance from an adult mixed blood, or by inheritance from a minor mixed blood, or by inheritance from a full blood minor, if there can be such an inheritance as that,—all restrictions are reserved as to the alienation of such allotment, or any part of it, held by an adult mixed blood. The trust patent is declared to convey to him, or rest in him —'pass' to him—if he is an adult, or as soon as he becomes an adult, the fee simple title *and he has the right to sell it without restriction.*

Now, let us see if we can find any reason for the policy of it. The act of 1902 removed the restriction upon alienation as to any heir of a deceased Indian, whether mixed blood or full blood, and whether the heir be adult or minor, to the extent of allowing a sale and conveyance of an inherited allotment, in case of an adult heir by himself, and in case of a minor heir by his guardian, with the approval or consent of the Secretary of the Interior. This, on the assumption, as it seems to me, as I have heretofore explained, that the heirs of one to whom

an allotment has been issued, and who has been put on the path of separate citizenship, and separate ownership, and separate responsibility in the struggle of life, would be more competent in many cases to manage their own affairs than would the original allottees have been and that the Secretary of the Interior should be the judge as to whether that condition has come about. Then, coming down to the so-called Clapp Amendment, *it seems to go a step further and say that when a mixed blood has come to an adult, he is competent to sell without being swindled, to make a proper bargain for his land, and to use the money that he gets out of it judiciously.* And the act seems to put his coming to the condition of an adult, as the time when that competency has come about. Not so, however, with the full-blood adult. As to him, Congress still restrains the restriction as to selling, incumbrancing, etc.; but, even as to him, the restriction is removed if the Secretary of the Interior is satisfied that he is competent to manage his own affairs. *In other words, it seems to me that by the Clapp Amendment Congress meant to say that it is conclusively presumed that an adult mixed blood is competent to go ahead and manage his own affairs, and therefore removed from him all restrictions on the sale of any allotment, or interest in any allotment, that he holds, no matter how it has come to him.* And, as to an adult full-blood, Congress means to say that, while he may also be competent to manage his own affairs, yet, we will leave it to the Secretary of the Interior to say whether he is or not."

(3) *Legal Status of the Indian.*

The legal status of the Indian, while anomalous in our jurisprudence, is pretty thoroughly settled and cannot require extensive citation of legal authorities.

"The Indian natives or tribes are *domestic*, semi-independent political communities owing a qualified subjection to the United States. They may be described as domestic dependent nations. They are not foreign nations, nor states in the international sense, nor states or territories within the meaning of the constitution. Their relation to the United States resembles *that of a ward to his guardian.*"

22 *Cyc.*, 117.

"An Indian is not a citizen of the United States by birth, because not born subject to the jurisdiction thereof. He cannot make himself a citizen without the consent and co-operation of the government. He may be naturalized either individually or through collective naturalization effected by treaty or statute."

22 *Cyc.*, 114.

"Whether any Indian tribe or members thereof have become so far advanced in civilization that they should be let out of *pupilage* * * * is a question to be decided by the nation whose wards they are and whose citizens they seek to become, and not by each Indian for himself."

*Elk v. Wilkins*, 112 U. S. 94.

"The Indians are *wards of the nation*, dependent upon it for their daily food and their political rights."

*U. S. v Kagama*, 118 U. S. 375.

"Indians residing on a reservation to whom allotments of land in severalty have been made, are yet wards of the nation, in a condition of pupilage and dependency."

*United States v. Rickert*, 188 U. S. 432.

(4) *General Principles of Law Appllicable to Land Patents*:

a. A patent to land, over the disposition of which the Land Department has jurisdiction, is

both the *judgment* of that Department as a *quasi-judicial* tribunal, and a *conveyance* of the legal title to the land:

*Paterson v. Ogden*, 141 Cal. 43; 74 Pac. 443.
*L. Marshal v. Teagarden*, 152 Fed. 662.
*King v. McAndrews*, 111 Fed. 860.
*James v. Gen. Iron Co.*, 107 Fed. 597.
*New Sunderberg Mining Co. v. Old*, 79 Fed. 598.
*U. S. v. Winona & C. R. Co.*, 67 Fed. 948; 165 U. S. 463.
*State v. Red Wing Lumber Co.*, 109 Minn. 185; 123 N. W. 412.

b. Such a patent of the Land Department is conclusive in a Court of Law as against all persons whose rights did not commence previous to its emanation, as to all matters of fact necessary to its issuance.

*Steele v. St. L. S. & R. Co.*, 107 U. S. 447.
*Davis v. Weibold*, 139 U. S. 507.
*Lee v. Johnson*, 116 U. S. 48.
*Johnson v. Tonsley*, 13 Wall. 72.
*Warren v. Van Brunt*, 19 Wall. 646.
*Shepley v. Corran*, 91 U. S. 330.
*Moore v. Robbins*, 96 U. S. 530.
*Marguez v. Frisbie*, 101 U. S. 514.
*Quimby v. Conlan*, 104 U. S. 420.
*Vance v. Burbank*, 100 U. S. 514.
*St. Louis Smelting Co. v. Kemp*, 104 U. S. 636.
*Baldwin v. Starks*, 107 U. S. 233.
*United States v. Minor*, 104 U. S. 447.

c. A patent to land is conclusive evidence as to the land conveyed by it.

*Knight v. Leary*, 54 Wis. 459; 11 N. W. 600.

d. A patent to land is conclusive as to the qualifications of the person to whom it is issued.

*Kansas City Mining Co. v. Clay*, 3 Ariz. 326; 29 Pac. 6.

e. A patent is conclusive as to the title of the patentee.

*Gibson v. Choteau*, 13 Wall. 92.

f. A patent is conclusive as to the performance by the patentee of the conditions precedent to his right to the patent.

*Jenkins v. Gibson*, 3 La. Ann. 203.

*Chapman v. School Dist.*, 134 Pac. 474.

(5) *Observations as to the patent and its Issuance under the Clapp Amendment.*

a. The patent to Me-gis-way-waish-Kung was issued under and pursuant to the Clapp Amendment. (See Record, pp. 147-150-143-145).

b. The Secretary of the Interior was the proper official under the Clap Amendment and other acts of Congress, to whom to apply for fee simple patent.

Sec. 5, Act 1887, *supra*.

Act of May 8, 1906.

Act of June 21, 1906.

c. In determining whether fee simple patent should issue to Me-gis-way-waish-Kung, the proper federal official necessarily had to pass upon the following questions, and necessarily determined them in the affirmative:

(a) Is the land applied for within the White Earth Reservation in Minnesota?

(b) Is Me-gis-way-waish-Kung an adult?

(c) Is Me-gis-way-waish-Kung a mixed blood Indian?

(d) Were the lands applied for previously allotted to him?

d. Evidence that Me-gis-way-waish-Kung was an adult was submitted to the federal authorities (Record, pp. 117, 121, 126, 132).

e. Federal authorities, since they issued a patent to Me-gis-way-waish-Kung, necessarily found and determined that he was an adult, and a mixed blood.

(f) The issuance of patent in the instant case differs from the issuance of patents in ordinary cases in these particulars: (a) The relation between the federal government and the patentee is that of guardian and ward; in the issuance of other land patents there is no such relation, and the federal government has no such relation or duty to the patentee. (b) The issuance of the patent in the instant case is followed by consequences which do not follow in the ordinary case. Here the issu-

ance of the patent is followed by the termination of the exclusive jurisdiction of the United States over the patentee and his subjection to State laws. This is not true in case of issuance of patents in cases other than to Indian lands. (c) In cases of the issuance of patents in other cases, the contractual rights and privileges of the patentee in respect to the patented lands are determined by the laws of the State or territory in which he resides and not by the laws of the United States, and bear no relation to the issuance of the patent. The contrary is true here. (d) In other cases the determination of age may be merely incidental to the issuance of the patent. In this case such determination is for the additional purpose of determining whether or not the right to sell and incumber the land shall be given to the patentee, and the guardianship cease. It is clear, therefore, under general principles of law and the effect of the Clapp Amendment as hereinafter noted, that the patent to the lands here involved was final and conclusive evidence, in all matters affecting said lands, that Me-gis-way-waish-Kung was an adult at the date of its issuance.

g. The authority exercised by federal officers in determining this Indian's age and his right to sell and incumber his land, and in issuing the patent thereto was an "authority exercised under the United States," and by denying to such determination and patent the force and effect claimed by plaintiff in error, and by assigning to the law of the State of Minnesota respecting conveyance by mi-

nors the force and effect which it did, the Supreme Court of Minnesota denied the validity and force of such authority and patent.

h. The rights which defendant in error claims did not commence prior to the emanation of the patent to the Indian, but subsequent thereto.

(6) *Deductions and Observations Concerning the Clapp Amendment.*

a. The Clapp Amendment evidences the settled conviction of the Congress that adult mixed blood Indians to whom allotments of land in the White Earth Reservation in Minnesota had been or should thereafter be made, had, under and by virtue of the guardianship and tutelage of the federal government to which they had been subject since 1887, so far advanced in intelligence and experience as to have the right and opportunity to manage his own affairs and to sell or incumber his land, if need be.

b. The Congress was, under the Constitution and laws of the United States the sole and exclusive judge upon that question.

Act May 8, 1906, Ch. 2348, Stat. L. 182.
*United States v. Holliday,* 3 Wall. 407.

In the *Holliday case,* the court said, "neither the Constitution of the State nor any act of the legislature can withdraw Indians from the influence of an Act of Congress which that body has the constitutional right to pass concerning them."

c. The restrictions which were removed by the Clapp Amendment were "*All* restrictions as to sale, encumbrance or taxation." Whatever restrictions of this character there were, were "hereby removed." *If* there were any restrictions by the State they were removed thereby. Since the state was without jurisdiction until the issuance of fee simple patents, we think there were no such restrictions and that the restrictions which were removed were those imposed by the Act of 1887 as construed in *U. S. v. Rickert.*

d. The Clapp Amendment obviously was intended to and did give to adult mixed blood Indians the right to sell and incumber the lands which had been or should thereafter be allotted to them in the White Earth Reservation in the State of Minnesota. This result was accomplished as effectively as though the act had said that such Indian should have such right. The "removal of all restrictions upon the right to sell or incumber" is necessarily the grant of the right to sell and incumber. No other construction could be imagined and none has been suggested by defendant in error. So far, therefore, as it lay within the power of the United States, the right to sell and incumber such lands had been conferred upon such Indians.

e. The Clapp Amendment was passed in the same year and only a few months after Section 6 of the Act of 1887 was amended to read as above quoted, and it is only fair to presume, in the light and understanding of that Amendment. It is note-

worthy, that the termination of exclusive federal jurisdiction was made to depend upon the issuance of patent in fee, and not by the mere arrival of the Indian at the age of twenty-one years. Before patent in fee simple could be issued the patentee had to be of age, and his age would have to be determined by the federal authorities. This determination, which involved the cessation of federal exclusive control and guardianship, could not be and was not left to state authorities.

f. The right of sale and incumbrance thus conferred upon Indians in respect to these allotments, by this Clapp Amendment, and fee simple patent, could not be restricted, modified or abrogated by the state law concerning conveyances of real estate by minors, unless by the specific authority or consent of the Federal Government. The person of the Indian and the lands allotted to him were, in respect to this right, within the sole and exclusive power and jurisdiction of the federal government. It was solely within the power of that government to say when and upon what terms, and by whose adjudication the right should be conferred, or how long it should be withheld. The only question, therefore, is whether or not the federal government at the time of and after passing the Clapp Amendment intended that the right of sale and incumbrance which it had thereby conferred should be restricted or postponed by the state in which the Indian's lands lay. This question in another form, is this: Did the federal Congress by the passage of the Clapp Amendment and the due issuance of a fee

simple patent thereunder, at a time when the laws of the state where the patented lands lay provided that conveyances of land by minors should be voidable at the option of the minor within a reasonable time after the minor became of age, intend to consent to the extension by the State of restrictions upon alienation to such future time as when the State should determine the Indian was of age? Such intent is not consistent with the obvious purpose of Congress to confer upon Indians by this Act the right of sale and incumbrance. Moreover, the age at which Indians become adults is the same under state and federal law. The assumption that Congress contemplated or intended to acquiesce in a further period of incapacity of the Indian to convey by virtue of this state law, necessarily involves that Congress should assume that federal officers would not properly or truly determine the Indian's age in issuing patent to him, for in no other way could this further period be predicated. The last assumption is, of course, absurd. Furthermore, the state's right to tax the land of the Indian must of necessity date from the issuance of the patent. The State cannot and is not given the power to determine the Indian's age for that purpose, for to give the state such power would be to defeat the exclusive jurisdiction and trusteeship of the United States. The power to preserve such jurisdiction and trusteeship can only be conserved by the retention by the United States of the power to determine and adjudicate the Indian's age. Congress would very naturally presume that the state which

accepted the determination of the Indian's age by federal authorities for the purpose of taxing his lands would accept it for the purpose of permitting him to convey such lands.

Not only was the age at which the Indian's disabili' ceased the same under state and federal law, but the statutory purpose of the disability was the same in both instances, namely, the protection of the Indian from the results of improvidence due to his immaturity and lack of experience. There would be, therefore, no added reason for the enforcement by the State of a restriction which was exactly identical with the one which Congress had just removed.

Undoubtedly, the state has the power to regulate the subject of conveyances of real estate. This is a part of the internal policy of the State with which Congress has no right to interfere; but the Indian and his land, at the issuance of the patent to him, were both within the exclusive jurisdiction of the United States. When and where and how the Indian and his land should become subject to state law was exclusively in the power of the United States to say, and when the state assumed jurisdiction of the Indian and his land, it could be only upon the terms imposed by the United States. Moreover, the construction of the Clapp Act and patents issued in pursuance of it which we here contend for does not involve any interference in the internal affairs of the State by Congress; the state still retains the power to regulate conveyances of land by minors. It is, however, prevented, by such construc-

tion, from saying that an Indian, whose adulthood and right to sell and convey land has been adjudicated by the United States, while yet the Indian was within its exclusive jurisdiction, is not in fact an adult. The character of adulthood has been imprinted on the Indian, so far as such lands are concerned, by the United States when it turned him over to the State, in just the same way as citizenship is conferred upon him, and exactly as freedom was engrafted on the negro and the States obliged to accept the negro in that new character. The State accepts this characteristic of the Indian when it taxes his land; must it not accept it when he desires to convey it?

It is urged by defendant in error that "when the lands have been conveyed to the Indian by patents in fee, * * * then each and every allottee shall * * * be subject to the laws, both civil and criminal, of the state or territory in which they may reside," and that, therefore, the laws of the State of Minnesota respecting conveyances by minors were, by Congress, intended to have the precise effect in the instant case which it contends for. This is but another way of restating the question which we propounded in the beginning, and all that has been said heretofore applies to refute it. The construction contended for assumes that Congress, intending to confer the right to sell and convey his land upon the Indian, nevertheless enacted that the state should be able to revoke or postpone the exercise of the right, or in other words, that Congress simply intended to turn over the guardianship of the In-

dian to the state. The difficulty with the argument of defendant in error from this clause of Section 6 is that to give the argument effect in the way and to the extent contended for, necessarily involves or calls in question the validity of the Act of the federal government by which the clause in question becomes operative. It becomes operative by the federal adjudication of adulthood involved in the patent. The State cannot accept the determination of the Indian's age by the federal government for the purpose of making the Indian subject to state law, both civil and criminal, and deny the correctness of that determination when the Indian seeks to convey his land. Or, otherwise stated, the claim made by defendant in error, that Congress has provided in the foregoing language that the Indian becomes subject to state law as soon as a patent is issued, and that under that state law minors' conveyances of real estate are voidable to his benefit in this case, is merely reasoning in a circle, for unless the Indian is an adult, he is not subject to that law, and he can only become subject to that law by the determination or adjudication of his adulthood by federal authority; hence, if he cannot become an adult by federal adjudication, he cannot become subject to the state law. It is evident, therefore, that he can never become subject to that particular state law to the extent of being deprived of his right to convey. Re-stated, the federal determination or adjudication of the Indian's adulthood (it is the only determination or adjudication of that fact logically possible under the circumstanc-

es) cannot be invoked and accepted to make the Indian subject to the state law which makes conveyances of land by minors voidable within a reasonable time after they attain their majority, and then rejected to permit the state to determine and adjudge that he is a minor and his conveyance voidable. Yet this is precisely what defendant in error contends for. To conclude on this point, the contention which defendant in error makes upon the language quoted from section 6 of the Acts, necessarily involves the tacit admission that the Indian was of age.

g. The Clapp Amendment first provides that "the trust deeds heretofore or hereafter executed by the Department for such allotments are hereby declared to pass title in fee simple"; it then adds, "*Or* such mixed bloods upon application shall be entitled to receive a patent in fee simple for such allotments." The last clause quoted adds nothing to the situation, if the Indian's age and right to convey are to be held open to attack after the issuance of patent in fee.

It is a fundamental principle of statutory construction that Courts will try to give effect to every part of a statute. Plaintiff in error is of the opinion that the last clause of the Act was intended by Congress to have a definite effect and purpose. That purpose, he believes, was to furnish the Indian allottee indisputable record evidence of his right to sell and incumber his land, to furnish him not only with the evidence of his title to the lands, for the

Trust patent was adequate for that purpose, but to furnish him also with the certificate of the sovereignty from whom alone he could derive the right or by whom alone he could be deprived of it, that he did have the right to sell and incumber the patented lands. If this be not the purpose and effect of this last clause, then no adequate reason for its adoption can be assigned, for it accomplishes no result which the preceding clause of the Statute does not effect. If this be not its purpose and effect, then there is no means provided whereby the Indian who wishes to sell his lands can present them to a prospective purchaser with a clear record title. Unless the result and effect of this last clause and of the patent issued pursuant to it be as claimed by plaintiff in error, then the Indian's title to his lands must always rest in part in parol, and he must always establish his age and mixed blood character and his right to sell and incumber, by parol evidence, and must always be content to take the smaller purchase price, which goes with his inferior title. Unless our contention in this respect is right, there is no way by which the Indian, prior to selling his land, can have his age and right to convey adjudicated and determined. Neither the State nor the United States provides any other means to determine this right. It is true he can sell his land and that his age and his right to convey can be determined in actions similar to the present one between parties claiming under diverse grants from the Indian. This, however, is not a satisfactory method of determining those questions, for it necessitates

the questionable practice on his part of succesive sales, in order to obtain the value of his lands.

For the final determination of the Indian's age and right to convey, the federal government is admirably equipped. It has reared and educated the Indian as its ward and pupil, has kept rolls and records of his parents and ancestors, has become familiar with his mode of life and his methods of keeping and computing time, has supported, cared for and paid annuities to him, has maintained schools and instructors for him, and has access to all records necessary to the determination of his age and mixed blood character. On the other hand, the State in purely private litigation has no adequate means or equipment for determining these questions. We are therefore, of the opinion that it was the intention of Congress in adding this last clause to the Clapp Amendment to provide both the Indian and prospective purchasers of land with clear, indisputable record evidence of his adulthood, as well as to provide a fixed and certain date at which his emancipation from federal jurisdiction should take place and the subjection of his person to state laws and of his lands to state taxation should be brought about.

h. As generally indicating the purpose of Congress not to leave questions as to Indian age and mixed blood to determination by State authority, section 3 of the Act of May 27, 1908, Ch. 199, 35 Stat. L. 312, is significant. That section provides, "That the rolls of citizenship and of freedmen of the Five Civilized Tribes approved by the Secretary of

the Interior shall be conclusive evidence as to the questions of Indian blood of any enrolled citizens or freedom of said tribes and of no other persons to determine questions arising under this Act and the enrollment records of the Commissioner of the Five Civilized Tribes shall hereafter be conclusive evidence as to the age of said citizen or freedman."

2. The foregoing claims were all presented to the Supreme Court of the State of Minnesota and that Court specifically held that "under the federal statutes, if a patent in fee is issued to an Indian, questions as to validity of his subsequent transfers of the land are controlled by the laws of the State," and again, "it, the patent, settles it conclusively in so far as the right of the Indian to take and hold title is concerned, but the Department has not attempted to adjudicate the capacity of the Indian to transfer his title."

It is therefore, obvious that the foregoing enumerated Statutes of the United States, together with validity of the authorities exercised by federal officers under them was drawn in question and that the judgment of the Supreme Court of Minnesota was against the validity of such Statutes, and authorities, and in favor of the validity of the Statutes of the State of Minnesota; it is also apparent that the aforesaid judgment and decision of the Supreme Court of the State of Minnesota was in favor of the validity of the Statutes of the State of Minnesota, regulating conveyances by minors and against the validity of the aforesaid Statutes of the

United States. It is also clear that said decision is in substance and effect against and adverse to the rights, title and privileges which plaintiff in error claimed and asserted under the provision of the federal constitution under the laws of the United States and under the commissions held and exercised by federal officials in the issuance of the patent here involved and in the determination of the questions leading up to such issuance.

It is well settled that if a federal question is fairly presented by the record, and its decision is actually necessary to the determination of the case, a judgment which rejects the claim, but avoids all references to it, is as much against the right within the meaning of the federal statute under which this appeal is taken, as if it had been specifically referred to and the right directly refused.

*Roby v. Colehour*, 146 U. S. 153.

*Chapman v. Goodnow*, 129 U. S. 540.

*Des Moines Navigation, etc., Co., v. Iowa Homestead Co.*, 123 U. S. 552.

II.

The questions presented by this appeal are not frivolous. The Clapp Amendment has never been construed in the particulars in which a construction is here sought. Plaintiff in error has a large and important interest, not only in the land involved in this suit direct, but also in the land involved in a similar suit in an adjoining county. The judgment in which the latter suit is, by stipu-

lation of the parties, to follow the final judgment in this case. Moreover, the settlement of the question of law primarily involved in this appeal is of vital importance to all within this State who are or who may hereafter become interested in real estate transferred by Indians. And the determination of that question here will set at rest finally, all doubt and uncertainty with respect to such questions.

If there is anything frivolous about the appeal, it would seem to the mind of counsel for the plaintiff in error, that it rests upon the other side of this case. Counsel for plaintiff in error finds it difficult to understand why, when the federal government under whose sole and exclusive gaurdianship and tutelege an Indian allottee has been, has passed an Act whose obvious purpose is to remove from the Indian those restrictions upon his right of alienation, which theretofore existed, and has provided that a fee simple patent may be had by him upon application therefor, when he becomes an adult, and when the duly authorized officials of that government have duly investigated the mixed blood character and the adulthood of the Indian applicant and have determined those questions in the affirmative,—under these circumstances, we find it difficult to conceive that a law of the State in which the land lies, which makes conveyances of minors voidable at their option within a reasonable time after they arrive at their majority should be held superior to the federal statutes which was enacted for the purpose of conferring upon the Indian allottee the precise right and privilege which the State

law would temporarily, at least, upon the construction of defendant in error, deny to the Indian; and it would seem to counsel for the plaintiff in error that when one who intends to purchase from the Indian the lands which have been so patented to him goes to the records of the County in which such land lies and finds there the patent so issued and finds the Clapp Amendment upon the Statute Books that such purchaser is entitled to say to himself that the only power which possesses the authority to impose or to remove restrictions upon the Indian has spoken on that subject and that it is not necessary to look farther for evidence of the Indian's right to sell and convey his land.

We, therefore, respectfully submit that the motion of defendant in error to dismiss the appeal or affirm the judgment of the Supreme Court of the State of Minnesota be denied.

Respectfully submitted,

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# DICKSON *v.* LUCK LAND COMPANY.

ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

No. 600. Submitted December 6, 1916.—Decided January 8, 1917.

Issuance of a fee simple patent for an allotment in the White Earth Indian Reservation, Minnesota, under the clause of the Act of March 1, 1907, c. 2285, 34 Stat. 1015, 1034, which declares that

such allotments when held by adult mixed-blood Indians shall be free of restrictions on alienation and patentable in fee, implies an administrative finding that the patentee was of age when the patent issued.

While this finding is decisive of the allottee's age for the purpose of sustaining his right to the title freed from the restrictions which Congress had imposed by the allotting acts, c. 119, § 5, 24 Stat. 388; c. 24, § 3, 25 Stat. 642, it does not conclusively establish his majority for the purpose of determining whether a deed of the land which he made after patent was subject, under the state law, to disaffirmance as a deed made in infancy.

The restrictions being removed and the fee simple patent issued, the allottee, pursuant to the Act of May 8, 1906, c. 2348, 34 Stat. 182, becomes subject to, and entitled to the benefit of, the laws of the State governing the transfer of real property, fixing the age of majority and declaring the disability of minors.

132 Minnesota, 396, affirmed.

THE case is stated in the opinion.

*Mr. Frank Healy, Mr. Clyde R. White* and *Mr. Charles C. Haupt* for plaintiff in error.

*Mr. Marshall A. Spooner* for defendant in error.

MR. JUSTICE VAN DEVANTER delivered the opinion of the court.

A tract of land in the White Earth Indian Reservation in the State of Minnesota is here in dispute. It was allotted and patented to a mixed-blood Chippewa Indian, and both parties claim under him. The allotment was made under legislation providing that the United States would hold the land in trust for the period of twenty-five years and at the expiration of that period would convey the same to the allottee or his heirs by patent in fee discharged of such trust and free of all charge or encumbrance, and also that if any conveyance should be made of the land, or if any contract should be made touching the same, before the expiration of the trust

period such conveyance or contract should be absolutely null and void. 24 Stat. 388, c. 119, § 5; 25 Stat. 642, c. 24, § 3. Afterwards, upon the allottee's application, a fee simple patent was issued to him under a provision in the Act of March 1, 1907, c. 2285, 34 Stat. 1015, 1034, declaring: "That all restrictions as to the sale, incumbrance, or taxation for [of] allotments within the White Earth Reservation in the State of Minnesota, heretofore or hereafter held by adult mixed-blood Indians, are hereby removed, and . . . such mixed bloods upon application shall be entitled to receive a patent in fee simple for such allotments." Following the issue of this patent, and on dates considerably separated, the allottee executed two deeds for the land, each to a distinct grantee. The plaintiff in this suit claims under the second deed and the defendant under the first. The object of the suit is to obtain an adjudication of these adverse claims. In the trial court the plaintiff prevailed and the judgment was affirmed. 132 Minnesota, 396.

In both courts the decision was put upon the ground that the first deed was made while the allottee was a minor and the second after he became an adult and that under the law of the State the deed given during his minority was disaffirmed and avoided by the one given after he became an adult. The only federal question presented or considered was whether the patent was conclusive of his having attained his majority at that time. The defendant contended that it was, but the ruling was the other way and the plaintiff was permitted to show the allottee's age by other evidence. The defendant concedes that, if the patent was not conclusive upon that point, the judgment must stand.

The validity of the patent is not assailed. On the contrary, both parties claim under it, one as much as the other. Nor is it questioned that the allottee received the full title freed from all the restrictions upon its disposal

which Congress had imposed. Thus the question for decision is whether the patent was to be taken as determining the allottee's age for any purpose other than that of fixing his right to receive the full title freed from all the restrictions imposed by Congress.

There is no mention of his age in the patent, and yet it must be taken as impliedly containing a finding that he was then an adult. This is so, because every patent for public or Indian lands carries with it an implied affirmation or finding of every fact made a prerequisite to its issue, and because the provision in the Act of 1907 made the majority of the allottee a prerequisite to the issue of this patent. But such implications, although appropriately and generally indulged in support of titles held under the Government's patents (*Steel* v. *Smelting Company*, 106 U. S. 447 450 *et seq.*), are not regarded as otherwise having any conclusive or controlling force. They are not judgments in the sense of the rules respecting estoppel by judgment, and we perceive no reason for giving them any greater force or influence than has been sanctioned by prior decisions.

The provision in the Act of 1907, under which this patent was issued, does not make for a different conclusion. In so far as it is applicable here, it does no more than to withdraw a particular class of allotments from the restrictions imposed by Congress and to authorize the immediate issue of fee simple patents for them. Although saying nothing on the point, it evidently intends that the administrative officers shall be satisfied in each instance before issuing the patent that the allotment belongs to the particular class; and so the patent when issued carries with it an implication that those officers found the allotment to be of that class. But the provision gives no warrant for thinking that this finding should have any greater effect or wider application than is accorded to the finding implied from the issue of other patents.

We conclude, therefore, that the administrative finding which this patent imports was not to be taken as decisive of the allottee's age for any purpose other than that of fixing his right to receive the full title freed from all the restrictions upon its disposal which Congress had imposed.

With those restrictions entirely removed and the fee simple patent issued it would seem that the situation was one in which all questions pertaining to the disposal of the lands naturally would fall within the scope and operation of the laws of the State. And that Congress so intended is shown by the Act of May 8, 1906, c. 2348, 34 Stat. 182, which provides that when an Indian allottee is given a patent in fee for his allotment he "shall have the benefit of and be subject to the laws, both civil and criminal, of the State." Among the laws to which the allottee became subject, and to the benefit of which he became entitled, under this enactment were those governing the transfer of real property, fixing the age of majority and declaring the disability of minors.

*Judgment affirmed.*